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Supreme Court, U.S.
FILED
NOV 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1897

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1989

MICHIGAN DEPARTMENT OF STATE POLICE
and COL. R. T. DAVIS, Director of the
Michigan Department of State Police,

Petitioners,

v

RICK SITZ, JOSEPH F. YOUNG, SR.,
DOMINIC J. JACOBETTI, DICK ALLEN,
KEITH MUXLOW and JACK WELBORN,

Respondents.

ON WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

JOINT APPENDIX

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Certiorari Granted October 2, 1989

PRINTED BY SPEAKER-HINES AND THOMAS, INC., LANSING, MICHIGAN—1989

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1/17/89	Brief in Opposition filed
2/22/89	Order denying application filed

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

RICK SITZ, JOSEPH F. YOUNG, SR., DOMINIC J. JACOBETTI, DICK ALLEN, KEITH MUXLOW and JACK WELBORN, **Plaintiffs,** **v** **THE MICHIGAN DEPARTMENT OF STATE POLICE and GERALD L. HOUGH, Director of the Michigan State Police,** **Defendants.**	**C.A. No. 86- -**

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COMPLAINT

There is no other civil action between these parties arising out of the same transaction of occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed after having been assigned to a judge. See MCR (1985) 2.113(C).

NOW COME the Plaintiffs, by and through their attorneys, **Stark and Gordon,** and **Mark R. Granzotto,** cooperating attorneys with the **ACLU Fund of Michigan,** and complain against Defendants as follows:

INTRODUCTION

1. Plaintiffs seek an immediate temporary restraining order and subsequent preliminary injunctive and declaratory relief enjoining Defendants from violating their constitutional and civil rights to be free from unreasonable search and seizure pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and Article I, §11 of the Michigan Constitution of 1963, as well as their right to be free from action on the part of Defendant, **Michigan Department of State Police,** which will occur without sufficient statutory authority or without appropriate promulgation of rules pursuant to state common law, MCLA §24.201 *et seq.*

PARTIES

2. Plaintiff, **Rick Sitz,** is a licensed driver in the State of Michigan, residing in the City of Taylor, County of Wayne, who regularly travels throughout the State in his automobile.

3. Plaintiff, **Joseph F. Young, Sr.,** is a licensed driver in the State of Michigan, residing in the City of Detroit, County of

Wayne, who regularly travels throughout the State in his automobile.

4. Plaintiff, **Dominic J. Jacobetti,** is a licensed driver in the State of Michigan, residing in the City of Negaunee, County of Marquette, who regularly travels throughout the State in his automobile.

5. Plaintiff, **Dick Allen,** is a licensed driver in the State of Michigan, residing in the City of Fairgrove, County of Tuscola, who regularly travels throughout the State in his automobile.

6. Plaintiff, **Keith Muxlow,** is a licensed driver in the State of Michigan, residing in the City of Brown City, County of Sanilac, who regularly travels throughout the State in his automobile.

7. Plaintiff, **Jack Welborn,** is a licensed driver in the State of Michigan, residing in the City of Kalamazoo County of Kalamazoo, who regularly travels throughout the State in his automobile.

8. Defendant, **Michigan Department of State Police** (hereinafter Defendant **State Police**), is a governmental unit of the State of Michigan, located at 1200 Sixth Avenue, Detroit, Michigan, which exercises or may exercise its authority on a statewide basis, including in the County of Wayne.

9. Defendant, **Gerald L. Hough,** who has an office at 1200 Sixth Avenue, Detroit, Michigan, is Director of the Michigan Department of State Police, and is sued in his official capacity.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to MCLA §600. 605 and 42 U.S.C. §1983.

11. Venue is proper in this Court pursuant to MCLA §600. 1615.

12. The roadblocks complained of herein as announced by the Michigan State Police on May 1, 1986 will encompass the County of Wayne, State of Michigan.

FACTUAL ALLEGATIONS

13. On May 1, 1986, Colonel Gerald L. Hough, Director of the Michigan State Police, announced in a press briefing in Detroit, Michigan that the Michigan Department of State Police will begin to implement and operate what he referred to as "sobriety checkpoints" (hereinafter "roadblocks") during May, 1986 **[Exhibit A].**

14. In February of 1986, Defendant **State Police** issued a draft copy of "Sobriety Checkpoint Guidelines" setting forth, in pertinent part, the "Goals and Objectives", "Policies and Procedures," "Program Design," "Implementation Guidelines" and "Program Implementation," with regard to the roadblocks **[Exhibit B].**

15. Said roadblocks will be set up in any and/or all counties in the State of Michigan at "selected locations" **[Exhibit B, p. 4].**

16. The alleged purpose of the roadblocks is to "monitor traffic for driver sobriety" **[Exhibit B, p. 4].**

17. According to the Michigan Department of State Police, "every driver is potentially subject to being stopped" **[Exhibit B, p. 2]**.

18. As specifically described in **Exhibits A** and **B** attached hereto, the aforementioned roadblocks will entail police stops, investigations, searches and seizures *not* based upon probable cause to believe that a driver has committed or is committing any crime and conducted without a warrant.

19. Specifically, the stops, investigations, searches and seizures will encompass, in part, the following:

"All traffic approaching the checkpoint will be stopped as long as traffic congestion does not occur. A uniformed police officer will approach the motorist and state, 'I am Trooper (Officer) _____ of the Michigan State Police (local police department). You have been stopped at a sobriety checkpoint set up to identify intoxicated drivers.' If there is no immediate evidence of intoxication, a traffic safety brochure developed specifically for this enforcement strategy will be given to the motorist.

"During the brief stop the officer will look for articuable signs, such as an odor of alcohol about the driver, slurred speech, the general appearance, and other behavior normally associated with OIUL or OUID violators. If, according to the officer, there is sufficient probable cause to believe the person is driving under the influence, the driver will be detained, asked for his or her driver's license, and directed to a predetermined 'safe area' for further investigation and psycho-motor coordination tests. If the situation warrants, the driver will be asked to submit to a preliminary breath test; and if sufficient evidence of intoxication is observed, the driver will be arrested.

"The line officer is to stay with the driver from initial contact to the arrest. When the officer leaves the line, he is to be replaced by another officer-in-waiting. If no reserve officers are available, the line is to continue until such time the remaining officers can no longer efficiently and safely handle the traffic presented.

"Decisions regarding pursuit or other actions to be taken in the event of unusual problems occurring in conjunction with checkpoint operations shall be made by the commissioned officer in charge at the scene." **Exhibit B,** ***Program Implementation***, pp. 12–13.

COUNT I

20. Plaintiffs repeat and reallege ¶¶1–19 above with the same force and effect as though set forth in full herein.

21. The previously described stops and investigations constitute a search and seizure subject to Article I, §11 of the Michigan Constitution of 1963.

22. Plaintiffs have a right to be free from unreasonable searches and seizures pursuant to Article I, §11 of the Michigan Constitution.

23. The searches and seizures described above will occur without probable cause to believe that Plaintiffs have committed or are committing a crime and without a warrant, and, as such, are violative of Plaintiffs' rights pursuant to Article I, §11 of the Michigan Constitution.

COUNT II

24. Plaintiffs repeat and reallege ¶¶1–22 above with the same force and effect as though set forth in full herein.

25. The previously described stop and investigation constitutes a search and seizure subject to the Fourth and Fourteenth Amendments of the United States Constitution (*Delaware* v *Prouse*, 440 US 648 (1979)).

26. Plaintiffs have a right to be free from unreasonable searches and seizures pursuant to the Fourth and Fourteenth Amendments of the United States Constitution.

27. The searches and seizures described above will occur without probable cause to believe that Plaintiffs have committed or are committing a crime and without a warrant, and, as such, are violative of Plaintiffs' rights pursuant to the Fourth and Fourteenth Amendment of the United States Constitution.

28. The roadblocks in the "Sobriety Checkpoint Guidelines" have been planned and will be implemented and supervised as part of the official policies, practices, customs and alleged rules of Defendant **Michigan Department of State Police,** and have been set forth under color of state law.

29. The roadblocks and "Sobriety Checkpoint Guidelines" described aforesaid have been planned and will be supervised and implemented by those acting within the scope of their official capacities.

30. Defendant **Gerald Hough,** has planned and will supervise and implement said roadblocks while acting within the scope of his official authority as Director of the Michigan State Police.

31. The aforesaid roadblocks and "Sobriety Checkpoint Guidelines" have been planned and will be supervised and implemented with intentional and deliberate disregard for the civil and constitutional rights, privileges and sensibilities of the Plaintiffs, including their fundamental right to be free from unreasonable search and seizure arising out of the Fourth and Fourteenth Amendments to the United States Constitution.

32. By planning, implementing and supervising the aforesaid roadblocks and "Sobriety Checkpoint Guidelines," Defendant **Hough,** in his capacity as official agent, representative and employee of Defendant **Michigan Department of State Police** has unlawfully violated Plaintiffs' aforesaid civil and constitutional rights.

33. The acts described aforesaid are in excess of any authority granted them by law and are without justification or excuse in law.

COUNT III

34. Plaintiffs repeat and reallege ¶¶1–33 above with the same force and effect as though set forth in full herein.

35. There is no statutory authority which authorizes or empowers Defendants to take the action complained of herein.

36. The statutory authority to operate such roadblocks relied upon by Defendants in its "Sobriety Checkpoint Guidelines" **[Exhibit B]** is MCLA §257.715(2), part of the Michigan Vehicle Code. However, this statute is inapplicable in that it specifically directs itself to maintenance of equipment on motor vehicles and inspection for defects in equipment,

and does not apply to the type of stops, inspections, searches and seizures that Defendants intend to implement.

37. The Michigan Department of State Police is subject to the provisions of the Administrative Procedures Act, **MCLA §24.201** *et seq.* with regard to its rule making authority.

38. A "rule" is defined by MCLA §24.207 as:

> "An agency regulation, standard, policy, ruling or instruction of general applicability, which implements or applies law enforced or administered by the agency, or which prescribes the organization, procedure or practice of the agency."

39. The draft "Sobriety Checkpoint Guidelines" **[Exhibit B]** set forth by the Michigan Department of State Police are "rules" for purposes of MCLA §24.201 *et seq.*

40. Defendants have not followed the procedure set forth in MCLA §24.201 *et seq.* with regard to properly promulgating and adopting the rules governing the implementation of the roadblock searches described aforesaid.

41. Moreover, the roadblock searches and seizures and the "Sobriety Checkpoint Guidelines" Defendants rely upon as set forth in **Exhibit B** are outside the matters governed by the Michigan Department of State Police enabling statute, MCL §28.1 *et seq.*

42. The rules Defendants seek to implement are arbitrary, unreasonable and in excess of the rule making power and authority of the Michigan Department of State Police.

43. The rules Defendants seek to implement constitute an abuse of discretion on the part of Defendants.

44. The Michigan Department of State Police has clearly manifested an intention to implement the rules beginning in May, 1986 **[Exhibits A and B]**.

45. It would be a vain and useless act for Plaintiffs to attempt to have the rules revoked administratively in that (a) the rules are not capable of revocation because they have never been adopted; and (b) Defendants have clearly manifested an intention to immediately begin implementing the rules in May of 1986.

HARM

46. Plaintiffs repeat and reallege ¶¶1–45 above with the same force and effect as though set forth in full herein.

47. The implementation by Defendants of the roadblock stops and searches as described aforesaid will cause Plaintiffs to suffer immediate and irreparable injury, harm, loss and damage in that their constitutional rights will have been violated and they will be subjected to unconstitutional, arbitrary and unreasonable action by Defendants without Defendants having obtained the appropriate statutory and/or administrative authority to so act.

48. Plaintiffs have no adequate remedy at law.

49. The immediate issuance of a temporary restraining order and subsequent issuance of preliminary injunction and declaratory relief will maintain the status quo.

50. The immediate issuance of a temporary restraining order and subsequent issuance of preliminary injunctive and declaratory relief will serve the public interest.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request the following:

a) That this Court issue an immediate temporary restraining order which shall remain in effect until such time as this Court can conduct a full hearing on Plaintiffs' Motion for Preliminary Injunctive and Declaratory Relief, enjoining Defendants, their agents, representatives and employees from implementing the roadblocks as described aforesaid in **Exhibits A** and **B.**

b) That this Court set this matter for immediate hearing on Plaintiffs' Motion for Preliminary Injunctive and Declaratory Relief.

c) That this Court enjoin Defendants, their agents, representatives and employees from instituting the roadblocks described aforesaid and declare that the roadblocks described aforesaid are unconstitutional and violative of Plaintiffs' federal and state constitutional, statutory and common law rights.

d) That this Court grant Plaintiffs such other and further equitable or other relief to which they are deemed to be entitled, including costs and attorneys' fees.

Respectfully submitted,

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Dated: May 16, 1986

OF COUNSEL FOR PLAINTIFFS:

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(Title omitted in printing)

ANSWER TO COMPLAINT

NOW COMES the Defendants, by and through their attorneys, Attorney General FRANK J. KELLEY, and Assistant Attorney General, Patrick J. O'Brien, and answers the complaint as follows:

1. Denied.

2. Neither admit nor deny for lack of sufficient knowledge, but leave Plaintiffs to their proofs.

3. Neither admit nor deny for lack of sufficient knowledge, but leave Plaintiffs to their proofs.

4. Neither admit nor deny for lack of sufficient knowledge, but leave Plaintiffs to their proofs.

5. Neither admit nor deny for lack of sufficient knowledge, but leave Plaintiffs to their proofs.

6. Neither admit nor deny for lack of sufficient knowledge, but leave Plaintiffs to their proofs.

7. Neither admit nor deny for lack of sufficient knowledge, but leave Plaintiffs to their proofs.

8. Admit.

9. Admit.

10. Neither admit nor deny for the reason paragraphs state legal conclusions and no factual allegations.

11. Neither admit nor deny for the reason paragraphs state legal conclusions and no factual allegations.

12. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiffs to their proofs.

13. Neither admit nor deny for the reason Exhibit A is a document which speaks for itself and needs no interpretation, but leave Plaintiffs to their proofs.

14. Neither admit nor deny for the reason Exhibit B is a document which speaks for itself and needs no interpretation, but leave Plaintiffs to their proofs.

15. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiffs to their proofs.

16. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiffs to their proofs.

17. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiffs to their proofs.

18. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiffs to their proofs.

19. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiffs to their proofs.

COUNT I

20. Adopt by reference the answers to paragraphs 1 through 19 above as though set forth in full herein.

21. Neither admit nor deny for the reason paragraph 21 states legal conclusions, any factual allegations are denied.

22. Neither admit nor deny for the reason paragraph 22 states legal conclusions, any factual allegations are denied.

23. Neither admit nor deny for the reason paragraph 23 states legal conclusions, any factual allegations are denied.

COUNT II

24. Adopt by reference the answers to paragraphs 1 through 22 above as though set forth in full herein.

25. Neither admit nor deny for the reason paragraph 25 states legal conclusions, any factual allegations are denied.

26. Neither admit nor deny for the reason paragraph 26 states legal conclusions, any factual allegations are denied.

27. Denied.

28. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiffs to their proofs.

29. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiffs to their proofs.

30. Neither admit nor deny for lack of specificity of allegations, but leave Plaintiff's to their proofs.

31. Denied.

32. Denied.

33. Denied.

COUNT III

34. Adopt by reference the answers to paragraphs 1 through 33 above as though set forth in full herein.

35. Denied.

36. Denied.

37. Neither admit nor deny for the reason paragraph 37 states a legal conclusion.

38. Neither admit nor deny for the reason paragraph 38 quotes MCL 24.207 and no answer is required.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Adopt by reference the answers to paragraphs 1 through 45 above as though set forth in full herein.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

AFFIRMATIVE DEFENSES

Plaintiff has failed to state claims upon which relief can be granted.

The answering Defendants at no time violated Plaintiffs' constitutional rights under Article I, §11 of the Michigan Constitution or the Fourth and Fourteenth Amendments of the United States Constitution.

The answering Defendants properly developed procedures and implemented sobriety checklanes within the statutory authority of the Michigan Department of State Police under the statutes relating to regulation of vehicles operated on the public highways of this state.

WHEREFORE, Defendants respectfully request that the Court dismiss the Complaint and deny the relief requested.

Respectfully submitted,

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Dated:

FINAL REPORT
SEPTEMBER 1985

MICHIGAN DRUNK DRIVING TASK FORCE

FINDINGS AND RECOMMENDATIONS

POLICY RECOMMENDATIONS

PROBLEM 1: Michigan's drunk driving laws specify that motorists can be penalized by two jurisdictions, the courts and the Department of State. When district courts suspend or revoke licenses for drunk driving, no appeal for relief to circuit courts is permitted. However, when the Department of State suspends a license for driver's refusal to take the breathalyzer test, the penalty is appealable to a circuit court. An overwhelming number of drivers are successful when they appeal the department's punishment to circuit courts. This practice weakens the drunk driving laws.

RECOMMENDATION 1: The Task Force recommends that license suspension and revocations by the Department of State no longer be appealable to circuit courts.

PROBLEM 2: Under the current system, fines collected by courts are not being used to alleviate the problems of drinking drivers. Costs imposed remain with the court, but fines are routed to the State Library Fund.

RECOMMENDATION 2: The Task Force recommends that the fines being collected on drinking and driving offenses be used to remedy the problems of drinking and driving through highway safety programs.

PROBLEM 3: Once the officer has probable cause to make

a drunk driving arrest, he can charge the driver with OUIL and invoke the implied consent law to require an evidentiary test. This generally means transporting the offender to the police station for final processing. At this stage of the arresting process, the officer must fill out several forms, many of which contain duplicate information. The information contained in the forms is either used at different locations within the system or for various purposes at the arresting site. These intricacies and time-consuming steps in making an arrest seem to have an adverse effect on the officer's desire to enforce the drunk driving laws. The time consumed in completing duplicate paperwork could better be used by the officer returning to the patrol area to make additional arrests. To further compound the delays at this level, a number of police agencies administer breath tests at one location and lodge the offender at a different location. In addition to the transportation time involved, more forms must be completed. Some departments even require the arresting officer to transport the arrestee to another location for bonding, if allowed, before arraignment. It was also noted that some police departments are causing delays because they are of the opinion that their department must obtain a certified driving record to accompany the arrestee to court. However, most courts are using LEIN printouts which eliminates this type of delay.

RECOMMENDATIONS 3: 1. **FORMS REDUCTION:** Devise a single form which would contain all the necessary information pertinent to the arrest. The form should contain the essential elements necessary to obtain a warrant, and should be standardized by all courts throughout the state. Photo copies can be supplied to other agencies who have a need for this information.

2. **COMBINE TESTING AND LODGING LOCATION:** Place breath testing equipment and certified operators at all

lodging locations in the state. The cost of testing should be determined and assessed to the proper agency.

3. **ADMISSIBILITY OF LEIN PRINTOUTS:** Provide for admissibility of LEIN printouts for court use and require certified driving records only in those cases where recent activity on the offender's driving record requires closer scrutiny.

PROBLEM 4: Relatively few delays occur at the prosecution level, however, some delays are prevalent in many prosecutors' offices due to staffing problems. In those locations, the increased workload brought on by increased arrests and requests for trial have not been supported by a sufficient number of attorneys to handle the increase. Other delays are caused by not having attorneys available at the time when most requests for warrants are made. A further delay noted was due to a lack of training in the prosecution of OUIL cases. A particular problem is the fact that a significant number of OUIL cases are being plea bargained to a lesser offense.

RECOMMENDATION 4: 1. **INCREASE STAFF:** Hire more attorneys in those offices presently understaffed.

2. **INCREASE TRAINING:** Conduct special schools for prosecuting OUIL cases.

3. **INCREASE PAY AND ACCOUNTABILITY:** Prosecutors should be better compensated but should also be held responsible for cases reduced to a lesser offense.

4. **INCREASE OFFICE HOURS:** Maintain hours during those periods of increased need for the purpose of preparing the legal papers or to advise the arresting officer as to needed proofs.

5. **MERIT INCREASE:** Grant incentive increases based on the attorney's ability to prosecute OUIL cases.

PROBLEM 5: Delays in the above categories can be measured in terms of minutes, hours, and often days. However, at the judicial level the delays are measured in terms of several days and months. Some of the delays are unavoidable because of the formal nature of the system. However, many delays are planned because they tend to benefit the courts, defendant, prosecution, or defense counsel. Even though these tactics may relieve pressure at one point by relaxing activities at another, in some cases, the overall outcome may be the nullification of the intended effect of the law.

RECOMMENDATION 5: 1. **INCREASE STAFF:** Hire more trained personnel in those areas which are experiencing a legitimate backlog.

2. **DETER BENEFITS ACHIEVED BY DELAY TACTICS:** Restructure sanctions so that the sentence for a guilty plea taken at arraignment is identical upon conviction at trial.

3. **THE LENGTH OF SUSPENSION** and the points against the driving record must also remain and not be bargained to a lesser charge.

PROBLEM 6: The process of screening and assessment, while being a very essential ingredient to a successful drunk driving prevention program, has also become one of the most common causes of lengthy delays. Delays are most prevalent where the courts are using screening agencies that are not properly staffed to meet the time constraints. These agencies may be either in-house service or an outside agency. Generally, the courts desire to retain the screening and assessment funds by using probation offices to complete

this task. However, many probation departments do not have sufficient personnel available to perform the screening and assessment requirements. In those jurisdictions properly staffed, the use of probation officers is very successful which seems to indicate that a sufficiently staffed agency must be maintained to comply with schedule demands and eliminate delays.

RECOMMENDATION 6: The Task Force recommends legislation earmarking funds realized by probation departments from screening and assessment be used for hiring and training probation officers.

PROBLEM 7: Another delay affecting a few courts is the res gestae rule which requires the prosecution to produce all res gestae witnesses. Some judges have interpreted this rule, which applies to felony cases, to apply to misdemeanor cases such as OUIL. This ruling causes delays and in some cases results in dismissal when prosecution is unable to produce all res gestae witnesses.

RECOMMENDATION 7: Since the rule is only affecting a small number of courts, they should relax the requirement and allow the case to proceed as is done in the majority of courts.

PROBLEM 8: Throughout the state of Michigan there is uniform administration of chemical tests and preliminary breath tests by police agencies. Only in the area of field sobriety tests to the roadside testing methods vary greatly among the agencies. Some of the tests used are not effective tools for the officer to determine the driver's level of intoxication. The National Highway Traffic Safety Administration has studied the use probability of detecting drivers with lower BAC. This three-part test consists of the horizontal gaze nystagmus test, walk-and-turn, and the one-leg stand.

The lack of uniform field sobriety testing is also a factor toward ineffective prosecution of Michigan drunk driving laws. Often the defendant's original charge is reduced or dismissed because of the method used or the numerous methods used within the same agency.

RECOMMENDATION 8: The Task Force recommends that all traffic law enforcement agencies in the state of Michigan consider the use of horizontal gaze nystagmus test, walk-and-turn, and the one-leg stand as part of their battery of tests.

PROBLEM 9: Given the current dimensions of jail overcrowding, even short sentences represent monumental pressure for county correctional facilities and staff. Public Act 310 of 1982 specifically authorized and use of community service programs as an alternative to incarceration to alleviate some of the pressure on the overtaxed institutions. A proposed 1985 amendment to this act (SB 123) makes mandatory a 48-hour jail sentence or 10 hours of community service for drunk driving offenders. The Task Force anticipates an increased use of community service programs throughout the state because of this recent change.

RECOMMENDATION 9: The Task Force recommends that local communities utilize the model community service program developed by the Task Force (See Appendix K) for developing their local programs.

PROBLEM 10: As a result of Michigan's overcrowded state detention facilities, many county facilities are also now affected. Alternative detention facilities are also now affected. Alternative detention facilities may be used to alleviate this overcrowding problem. This concept is being used in certain communities within the state which may serve as a model for other communities considering alternative detention facilities.

RECOMMENDATION 10: The Task Force recommends that communities utilize the contract agreement between the County of Wayne and the Volunteers of America (See Appendix L) as a model for developing an alternative detention facility.

PROBLEM 11: While most motorists agree that our highways need to be safe for all transportation purposes, there is disagreement on what role government should play in enforcing existing laws or enacting new ones. The Task Force has proposed several general deterrent measures, and the public may be reluctant to accept such new measures.

RECOMMENDATION 11: The Task Force recommends that long-term coordinated public education campaigns regarding enforcement and general deterrent measures be developed.

PROBLEM 12: At the present time there is a discrepancy in the reporting of jail time by various courts. In some courts jail time is reported only if the convicted subject is ordered to serve time following sentencing. In other courts every convicted subject who was placed in custody at time of arrest is reported as receiving a jail sentence even though it is only for the period of the custodial arrest.

RECOMMENDATION 12: The Task Force recommends that the Department of State, District Judges Association and the District Court Administrators Office establish a uniform policy of reporting jail time. It also recommends that this policy result in jail time being reported only in those cases where the convicted subject is required to physically serve time in jail following sentencing or in addition to the custodial arrest.

PROBLEM 13: When a conviction for an offense of OUIL,

OWI, or related charge is reported to the Department of State, there is no indication as to which penalty level (1st, 2nd, or 3rd offense) the individual was sentenced. This causes incomplete and inaccurate analysis of the penalty phase.

RECOMMENDATION 13: The Task Force recommends that the Department of State institute a new series of codes for use on the abstract of conviction which would distinguish convictions under the various penalty levels.

PROBLEM 14: A major problem confronting the various groups and organizations involved with the drinking driver problems (from a public information perspective) is the lack of any sort of comprehensive plan or strategy for public information and education (PI&E) programs and activities. The results, thus far, have been the continuous proliferation of a wide variety of different programs, events, and campaigns throughout the year, aimed at various "target audiences" and sponsored by well-meaning groups but with little or no evidence of coordination with other programs.

RECOMMENDATION 14: Develop a long-term strategy for implementation of a comprehensive PI&E plan (i.e., based on research such as that recently completed at Michigan State University by Dr. Charles Atkin.)

PROBLEM 15: Currently, offender failure to comply with rehabilitation and treatment recommendations made at the time of sentencing is not a factor in reissuance of a driver license. Therefore, the offender who has been identified by the courts as needing rehabilation may be re-licensed without the necessary intervention services which may positively impact on recidivism.

The Office of Substance Abuse Service has experienced difficulty in determining if the courts are following through with screening and assessment recommendations, and whether the drunk drivers actually attend recommended programs. The Department of State currently collects this information from abstracts submitted by the courts.

RECOMMENDATION 15: The Task Force recommends that a reporting system be established to assure that individual offenders assigned to education and treatment services, in fact, comply with the assignments, and to make information on compliance available to motor vehicle administration officials at the time of appearance for re-licensing. A written release from the sentencing court or other written evidence of compliance to the terms of sentence should be mandatory prior to license reissuance.

PROBLEM 16: There is a lack of consistency in the language used to describe drinking and driving issues. Unfortunately, these inconsistencies serve to perpetuate myths. For example, the drinking driver who violates the law should be referred to as a "problem drinker"" not a "social drinker."

RECOMMENDATION 16: The Task Force recommends that the glossary, which is included in Appendix C of this report, be used as a basis for standardization and that all professionals working in the area of substance abuse services, enforcement, and adjudication, use this language which is consistent with present information about problem alcohol and other drug use.

LEGISLATION RECOMMENDATIONS

PROBLEM 17: The Holmes Youthful Trainee Act (YTA) covers criminal offenses other than first-degree murder and

major drug crimes, and therefore, would include OUIL. The YTA permits a court to grant youthful training status to youths between their seventeenth and twentieth birthdays which does not constitute a criminal conviction. Another negative aspect is that YTA dispositions do not carry any sanctions for trainees who violate probation terms. Finally, the YTA precludes the Department of State from imposing administrative actions against the driver.

RECOMMENDATION 17: Therefore, the Task Force recommends legislation be adopted to exclude OUIL violations from the Youthful Trainee Act.

PROBLEM 18: The Task Force, in its *Interim Report*, recommended that the state of Michigan adopt a law requiring the use of seat belts. Public Act No. 1 of 1985 makes seat belt use mandatory in this state effective July 1, 1985.

RECOMMENDATION 18: The Task Force recommends strict enforcement of the mandatory seat belt law by all police departments in the state of Michigan.

PROBLEM 19: Many courts are not admitting into evidence the defendant's refusal of a breath test which often results in dismissal of the drunk driving charge.

RECOMMENDATION 19: The Task Force recommends that legislation be introduced making the refusal of a breath test admissible into evidence.

PROBLEM 20: The Michigan Motor Vehicle Code's current definition of "operator" does not include an intoxicated person arrested while asleep in a stationary vehicle with the motor running. As such, intoxicated persons arrested under the current definition have been successful in having the

charges dismissed because the current definition does not include them as an operator of a motor vehicle.

RECOMMENDATION 20: The Task Force recommends that the Motor Vehicle Code be amended to redefine "operator" to include this situation.

PROBLEM 21: In 1982 the Michigan Legislature, in Public Acts 309, 310, and 311, adopted significant reforms aimed at curbing death, injury, and property damage caused by drinking drivers. The Dram Shop Act makes a bar owner liable to the victims of a drunk driver's negligence only if the bar served a visibly intoxicated person. The House Liquor Control Committee is now considering HB 4550 which could have a negative effect on the drunk driving laws. The deterrence of drinking and driving must come from all those concerned and not just from criminal sanctions and law enforcement. Civil regulation with the threat of liability is an important tool in the combating of drinking and driving. The proposed amendments would limit all compensation to the injured party, no matter how serious the injury, and no matter how drunk the driver was when the bar owner served them.

RECOMMENDATION 21: The Task Force recommends that legislation tending to limit the bar owner's liability not be enacted. However, the Task Force would support such legislation if insurance coverage was made mandatory for all bar owners.

PROBLEM 22: A countermeasure that is purported to be effective in deterring people from driving drunk is the loss of the operator's license. Such a countermeasure is even more effective when the loss of the license is certain and immediate. Currently, in many cases a drunk driver retains possession of the license for extended periods of time, especially

while awaiting a jury trial, and in a number of cases the license is never relinquished. One method of achieving certain and immediate action is prompt license suspension for drivers who refuse the breath test or when tested have a BAC at or in excess of 0.10%. A police officer, acting as an agent for the Secretary of State, would take the operator's license in instances cited above and issue a temporary permit pending an appeal to the Department of State. A document entitled, "Swift and Sure Licensing Sanctions or Administrative Per Se Licensing Sanctions," was prepared as an example of how such a procedure might operate in the state of Michigan.

RECOMMENDATION 22: The Task Force recommends that the Legislature study the concept of an administrative per se driver license sanction for drunk drivers.

PROBLEM 23: There is presently no requirement for central reporting of drunk driving arrest information in Michigan. With over 700 police agencies and numerous prosecuting authorities on all drunk driving arrests, and impossible to devise a system to track the cases through each phase (arrest, prosecution, and disposition.)

RECOMMENDATION 23: The Task Force recommends that legislation be sought to mandate the central reporting of drunk driving related cases. This mandate should include reporting at each phase of the case.

PROBLEM 24: The Congress of the United States enacted legislation in 1982 that provides for alcohol highway safety incentive funds (Section 408) for states that meet certain criteria. Funding is available in a basic grant and a supplemental grant equivalent to 30 percent and 20 percent, respectively, of a state's fiscal year 1983 Section 402 Federal Highway Safety Fund apportionment. If Michigan was qualified for both grants, it would receive some $5.7 million over a three-year period which could help defray some of the costs for implementing Task Force recommendations. A state must qualify for the basic grant in order to be eligible for the supplemental grant. Currently 13 states have qualified for both the basic and supplemental grants. Michigan currently does not satisfy two of the four criteria for the basic grant. They are as follows:

1) The prompt suspension for a period of not less than 90 days for a first offender, and not less than one year for repeat offenders, of the driver's license of any individual who has committed an alcohol-related traffic offense, or who refuses to submit to a chemical test under a state's implied consent statute.

2) A mandatory sentence which shall not be subject to suspension or probation, of (1) imprisonment for not less than 48 consecutive hours, or (2) not less than ten days of community service of any person convicted of driving while intoxicated more than once in any five-year period. Michigan meets the requirements of criterion No. 1 except for "prompt suspension" which has been defined by the Congress as "an average of 45 days between arrest and sanction". "Imprisonment" has been defined by the Congress as confinement in jail, or an alternate detention facility, or inpatient treatment facility. The mandatory sentence would only apply to those convicted of second offense OUIL/UBAL (unlawful blood alcohol level.)

RECOMMENDATION 24: The Task Force recommends that the state of Michigan enact the necessary legislation to comply with the criteria for obtaining Section 408 alcohol highway safety funds.

EDUCATION AND TRAINING RECOMMENDATIONS

PROBLEM 25: In Michigan, children are being taught about the dangers of alcohol at different age levels. Some receive instruction in elementary school while others may not receive classroom instruction until junior high or high school years. Still others are not receiving any health education. There is also a lack of uniformity in the curriculum which is being taught and the amount and extent of the information offered.

RECOMMENDATION 25: The Task Force recommends that a uniform health education curriculum for the kindergarten through twelfth grade (K-12) system be developed and implemented. It is recommended that such curriculum include education on the effects of alcohol and other drugs on driving.

PROBLEM 26: Although recently, more resources have been directed toward the development and dissemination of educational materials on drunk driving, it is apparent that additional emphasis is needed in certain specific areas clearly identified as needing attention. The Task Force has identified four (4) "problem targets" as follows:

1) Young drivers (16 to 24 years of age).

2) The workplace.

3) Common myths and incorrect assumptions.

4) Riders of two-wheeled vehicles and pedestrians.

RECOMMENDATION 26: Develop, promote and fund drunk and drugged driving programs, activities and campaigns, including but not limited to the following:

a) The development of countermeasure programs aimed specifically at young drivers (16 to 24 years of age).

b) The preparation and distribution of an informational packet for the workplace for use by businesses and governmental agencies. (Develop theme such as "How Drunk Driving Impacts Your Business.")

c) The development of public information programs and activities to help correct common myths and incorrect assumptions about alcohol and other drugs and driving.

d) The encouragement of alcohol countermeasure programs having to do with two-wheel vehicles, off-road vehicles and pedestrians.

PROBLEM 27: The abuse of alcohol and other drugs seems to be influencing the lives of young people long before they even consider driving a motor vehicle. Children are exposed to alcohol and other drugs at earlier ages than previous generations. While drug education may be starting sooner for these children, information on the effects of alcohol and other drugs on the ability to drive is not always part of the education.

RECOMMENDATION 27: Encourage schools to promote programs on the abuse of alcohol and other drugs as they relate to traffic safety.

PROBLEM 28: The Michigan Model for Comprehensive School Health Education is a joint effort by several state agencies. The curriculum is an attempt to standardize the content of information being delivered to Michigan school children. In reviewing the curriculum, however, the Task Force recognized a lack of information on drug abuse as it relates to traffic safety.

RECOMMENDATION 28: Encourage greater emphasis on drug abuse, as it relates to traffic safety, in Michigan Model for Comprehensive School Health Education.

PROBLEM 29: Driver education courses are experiencing increased difficulty in obtaining adequate financial support. The cost of such education is often too high for schools to bear, leaving prospective driver education students to seek proper education elsewhere. Additionally, driver education courses vary greatly in content, some devoting only a small amount of time to the problem of drunk driving, and others devoting a great deal of attention to the problem.

RECOMMENDATION 29: The Task Force recommends that adequate funding for a driver education curriculum be supported. It is recommended that such education be expanded to include training on alcohol and other drugs as related to traffic safety.

PROBLEM 30: Driver education courses are a useful medium for delivering important information on drunk driving. Adequate material is not always readily available to the classroom teacher.

RECOMMENDATION 30: The Task Force recommends that the Office of Substance Abuse Services, the Office of Highway Safety Planning, and the Department of Education collaborate to provide curriculum assistance and professional development to driver education teachers.

PROBLEM 31: There is no assurance of ongoing training for judges and other criminal justice personnel to obtain information relevant to substance abuse. Such information is vital in making appropriate sentencing decisions relevant to drinking and driving legislation as well as other drug related crimes.

RECOMMENDATION 31: The Task Force recommends that the training program developed by the Michigan Judicial Institute for Public Acts 309, 310, and 311 of 1982, or comparable training, and a shortened version of the program, be available for the judges and other criminal justice personnel. It is further recommended that the following items be included:

1) Positive aspect of intervention: "It Saves Lives."

2) Basic information on alcohol and other drugs;

3) How alcohol and other drugs effect behavior in general, driving in particular;

4) Language usage, i.e., denoting offenders as "social drinkers" fosters the attitude that drinking or other drug useage and driving is acceptable;

5) Descriptive overviews of potential referrals, i.e., education, treatment programs, alternative programs, self-help groups;

6) The assessment process, i.e., the procedure, testing tools and criteria used to develop recommendations for rehabilitation;

7) Comprehensive state prevention plan overview which stresses the necessity of a concerted effort of agents can effect supply and demand as it relates to alcohol and other drugs.

EVALUATION RECOMMENDATIONS

PROBLEM 32: Efforts to impact the "had been drinking" driver involvement in Michigan accidents have centered

around the traditional approaches of public information and education, and increased enforcement. While arrests and accidents are increasing, the involvement of the "had been drinking" driver in fatal accidents has also continued to increase as a percentage of the total. It is imperative that we try new techniques to deter people from irresponsible drinking and driving.

RECOMMENDATION 32: The Task Force recommends that in concert with the 1983 Report of the Presidential Commission Against Drunk Driving, the National Transportation Safety Board, and the National Commission on Drunk Driving, the use of temporary sobriety checklanes be used on a trial basis. It is recommended that these checklanes be operated within the definitions, goals, objectives and general policies developed by the Task Force.

PROBLEM 33: In order to improved the screening and assessment process, there needs to be continued open communication among the Office of Substance Abuse Services, District Court Judges and Probation Officers.

RECOMMENDATION 33: The Task Force recommends the Office of Substance Abuse Services, the Michigan District Judges Association, and the Michigan Association of Probation Services continue to meet on a quarterly basis to discuss and resolve any problems relative to the screening and assessment process. It is recommended that the District Judges Association communicate with its own membership on a regular basis regarding the screening and assessment process.

PROBLEM 34: Public Information and Education (PI&E) is the responsibility of many state employees, each assigned to a general area or topic. Unfortunately, there exists no single position in state government responsible solely for the

PI&E campaigns for drunk driving. The recommendations made by the Task Force will have little chance for success if left to a group of agencies.

RECOMMENDATION 34: The Task Force recommends that the State of Michigan employ a full-time staff to carry out these PI&E recommendations.

PROBLEM 35: There are presently no guidelines which determine the operation of Alcohol Highway Safety Education (AHSE) Programs. This has led to variability in methods of service delivery. Due to this lack of uniformity, it has been impossible to evaluate the effectiveness of these programs. For example, 75% of the licensed AHSE Programs are conducted by substance treatment providers. This has resulted in a therapeutically-oriented educational approach and a broad disparity among program objectives.

RECOMMENDATION 35: The Task Force recommends that the Office of Substance Abuse Services implement the standards for Alcohol Highway Safety Education Programs, which have been developed on a work group under the auspices of the subcommittee on Rehabilitation and Treatment (See Appendix J). These standards address structure, staff qualifications, curriculum and target populations. Implementation of such standards will assure uniformity and allow for valid evaluation. In recognition of the increasing involvement of other drugs in traffic crashes such as marijuana, especially among the young, it is recommended that the program title, "Alcohol Highway Safety Education," be changed to "Substance Abuse Traffic Safety Education."

[Testimony of H. Lawrence Ross, Transcript vol. I]

[8] H. LAURENCE ROSS, Ph.D., having been sworn in by the Clerk of the Court, testified on this oath as follows:

DIRECT EXAMINATION
BY MS. GORDON:

THE COURT: Welcome to the land of perpetual summer as we can see outside.

MS. GORDON: Deborah Gordon on behalf of the Plaintiff.

(BY Ms. Gordon, continuing)

Q. Doctor Ross, would you again state for us your [9] full name and current title, please?

A. H. Laurence Ross, I'm Professor of Sociology at the University of New Mexico.

Q. How long have you been at the University of New Mexico?

A. Three years.

Q. What is your specialty at the University of New Mexico?

A. Our specialty is sociology of law.

THE COURT: Sociology of the law?

THE WITNESS: This is right.

(Ms. Gordon, continuing)

Q. Prior to joining the University of New Mexico, where were you last employed?

A. I was at the State University of New York in Buffalo.

Q. What was your position?

A. Professor of Sociology and Law.

Q. Thank you. Can you briefly describe for us your educational background?

A. I have a bachelor's degree from Swarthmore College in Pennsylvania. A master's and Ph.D. from Harvard University.

Q. Give us your area of specialization in these degrees?

[10] A. An undergraduate degree in psychology, graduate degree in social relations.

Q. Okay. And have you submitted or published any reports or publications?

A. Yes, ma'am.

Q. And directing your attention, if you would, please to those that are involved with the issue of drinking and driving. Please, would you describe for us the nature of these publications?

A. I have done several studies of attempts to use law to deter drunk driving. Most specifically in the study of a British law of 1967, study of a crackdown by British police. Subsequent to that in 1975, study of a French law in 1978. Study of Scandinavian laws concerning drunk driving, and a book reviewing literature in the United States and throughout the world on deterring drunk driving which was published first in 1982.

Q. What is the name of the book you just referred to, please?

A. Called Deterring The Drinking Driver.

Q. First published in 1982?

A. That is right.

Q. Has there been a subsequent publication?

A. Yes, there's been a revision in 1984.

[11] Q. All right. Any other major writings or treatises in which you have directed your attention to the issue of drinking and driving?

A. Quite a few. I guess most recently I have studies in New Mexico law under contract with the State Department of Transportation. I have studied most recently a British crackdown in December of 1983.

Q. Excuse me for interrupting you, Doctor, with regard to the New Mexico studies, specifically what are you looking at there?

A. We have there administrative license suspension and I was in charge of doing an evaluation. We also have mandatory jail on the second offense for drunk driving. I was discharged with determining the extent to which the Courts and jails were in compliance.

Q. With regard to the study in Britain, what does that specifically concern?

A. That was a publicity campaign along with various police officers and the judiciary, the drunk cases which took place in and around Christmastime, 1983. I was charged with evaluating the effect of that on drunk driving.

Q. Go ahead, if you would, any other major publications in which you have directed your attention to the [12] issue of drinking and driving?

A. That — well, those are the major ones I recall.

Q. And with regard to the studies that have been done elsewhere, you have reviewed in preparation for your various publications concerning the issue of drinking and driving, highlight the important ones, please?

A. In the summer, summer of 1981 I believe it was, I spent three months at the United States Department of Transportation and Traffic Safety Administration. I read to the best of my ability the entire content of their library concerning efforts to use law to control drunk driving. Of course, many of these are my own studies. But there's a large amount of literature, studies from Canada and Australia. These are probably the major ones.

Q. Those being studies concerning what?

A. Concerning the attempt of Government to control drunk driving by the use of deterrent threats.

Q. Any major studies you are aware of concerning the effect of Government to control drunk driving that you have not reviewed or familiarized yourself with?

A. I've tried to keep up with the literature and I do not know of any major published major study of which I would be ignorant.

[13] Q. Are you familiar with the study that occurred in the United States concerning the efforts of law enforcement agencies and the like to have an effect on drunk driving?

A. Yes, I am.

Q. Could you briefly describe for us you membership in professional associations?

A. I am a member of the American Psychological Association, the Law and Society Association where I served two periods as trustee. The Society of the Study of Social Problems for which I served four years as elected secretary. I am a member of the International Committee on Alcohol, Drugs and Traffic Safety. Member of the Committee on Alcohol and Drugs and National Safety Council.

Q. Can you also describe for us, please, any fellowships or awards you have received? Again, directing your attention to those concerned with the issue of alcohol related accidents or drinking and driving?

A. My research of alcohol has been supported by the Insurance Institute of Highway Safety. It's been supported by the United States Government National Highway Traffic Safety Administration and the American Bar Foundation. I have just received a Fullbright lectureship to Finland to lecture [14] on the topic of sociology of law and specifically deterring drinking and driving.

Q. You indicated that you authored a book called Deterring the Drinking Driver. Would you briefly describe for us, please, what your research was concerned with during the compilation of that book?

A. That's basically a review of the literature, review of the world experience concerning the attempt of law to control behavior. I summarized in the Library at Washington and all of the published materials throughout the world wherever Governments were trying to use deterrent threats to control drunk driving, and where any kind of reasonable evaluation was attemped. Do you want more detail?

Q. Is there anything specifically in addition to what

you've already testified to that you reviewed and concentrated on other that what you have mentioned?

A. What I tried to do was the organization of all these experiences into theoretical relative categories. Attempt to increase severity of punishment, attempt to try to increase the severity of the likelihood of punishment, attempt to increase the swiftness of punishment.

Q. Doctor, are you familiar with the term, alcohol related accidents?

[15] A. I am.

Q. Alcohol related fatalities?

A. Mm-hmm.

Q. And is that terminology commonly used in the data and studies you have reviewed?

A. Correct.

Q. Is that a term that's nationally used within the United States?

A. Mm-hmm.

Q. Is that a yes for the record?

A. That's a yes for the record.

Q. All right, thank you.

What does the term alcohol related accidents or fatalities refer to?

A. It usually refers to an accident where it's been determined, often by the police and sometimes by a laboratory,

that some party involved in the accident had a blood alcohol concentration over a given amount. In New Mexico, we use .05 percent blood alcohol concentration. That any party in the accident, either the driver or pedestrian has that amount of blood alcohol. That's considered to be an alcohol related accident.

Q. If an accident is alcohol related, does it necessarily mean that it was caused by alcohol?

[16] A. Although some people have jumped to that conclusion that's not the case.

Q. Why not?

A. One alcohol related accident where you can see the difference clearly is if you were drunk and I was sober. I crossed the road and hit you head-on, that would be an alcohol related accident, even though the fault would clearly be my side, or if I were a drunk pedestrian and dashed out into the highway. You soberly came along and ran into me and killed me, that would be alcohol related fatality even though the alcohol would not have caused that.

Q. With regard to the way statistics are kept in the United States, from your observation and review of them, is the data vis-a-vis drunk driving normally picked up in the terms of alcohol related as to compared with caused by alcohol?

A. You very seldom see cause by alcohol, although this is fairly alcoholic.

Q. Have you been able to determine within a reasonable degree of scientific certainty what the number of accidents in this country are that are actually caused by alcohol?

A. I haven't personally done the research, but the [17] National Academy of Sciences has published a paper with an

estimate of approximately twenty-five percent of all fatal crash related fatalities, meaning actually caused by alcohol since the number, the total number of fatalities runs between forty and fifty thousand, one would say between ten and thirteen thousand people annually are killed in accidents caused by alcohol.

Q. So if the statistics are utilized which would indicate fifty percent of all accidents are alcohol related, that does not mean fifty percent are caused by alcohol?

A. That is correct.

Q. All right. Have you been able to determine, within a reasonable degree of scientific certainty that the nature of the victim in drunk driving accidents?

A. Not my own research, but that of the National Highway Traffic Safety Administration. James Fels (phonetic), who has published an analysis of the United States fatalities from what is called FAIR System of Fatal Accident Reporting System. Mr. Fels says that more than half of the fatalities in alcohol related crashes are themselves drunk drivers. So that the typical [18] victim of a drunk driving accident is a drunk driver. An additional twenty percent of drunk passengers of drunk drivers, say drinking with the driver who get killed in the accident. And another ten percent are pedestrian.

Q. In your opinion, are those methods of, vis-a-vis law enforcement techniques and the like of effecting a rate of fatalities be caused by alcohol?

A. Yes, I think they are.

Q. And what are the methods of effecting a rate of fatalities caused by alcohol in your opinion?

A. My research of the cases indicates that these deterrent threats of punishment can be effective in the short run

to the extent that they may convince people their chances of being punished are relatively high. That is punishment is likely and in certain consequences of misbehavior. It is also reasonable as contrasted to the case if punishment is applied quickly and swiftly, that it is going to be more effective than if it is applied after a long delay.

Q. Using all methods available that you are aware of, in your opinion what are the best methods for protecting a driver from a possible fatal alcohol caused accident?

[19] A. Well, you have to answer that on several levels. One goes back to the question I answered previously which shows that frequently the victims of drunk driving are themselves drunk. And maybe it's a physical answer, if you don't drink and drive situation your chances of being a victim are reduced by eighty percent. More generally in terms of the kind of effect of public policy might reduce the toll of alcohol related as well as other crashes, passenger restraints are accepted by the safety community as probably the most promising cost effective approach.

Q. What else is a promising method vis-a-vis cost effectiveness in protecting citizens from the likelihood of a fatality?

A. Beyond passive restraints, such as an air bag, we have active restrains such as an existing seat belt. And laws that mandate compliance with the administering of seat belts. A chief compliance through the enforcement system to have some positive outcome varies by the jurisdiction. There is also considerable evidence that the approach tries to get people either to drink less or to drive less may be cost effective and safe. Thus taxes that raise the price of [20] alcohol have been shown to be related to a lesser amount of drunk driving. And we speculate, although we don't know very well that such things as improved public transportation would be a means of getting and obtaining less drunk driving. For example, the drunk driving happened, is not very important because when people drink, they take the subway and they live in Manhattan. If you could make the United States into Manhattan, you wouldn't have drunk driving.

THE COURT: Would you want to?

THE WITNESS: You don't have to ask that from somebody from New Mexico. I mean in general the problem of drunk driving is built into this society. We are a society who approves of the use of alcohol, and a society dependent upon the private automobile. And given these facts, drunk driving is structured, is going to be a part of the way of life that we value.

(By Ms. Gordon, continuing)

Q. Are you saying it is your opinion that using passive and unpassive restraints is the most effective way of protecting the driver?

A. If you could put an air bag in every car we would [21] expect it would reduce total fatality rate in crashing about fifty percent. Whereas if you get rid of every single drunk driver on the road, we expect to reduce the fatality rate by twenty-five percent. Which is the more feasible and which is the more fruitful approach, I think is very obvious.

Q. Have you reviewed any studies or any data which would indicate where the drunk driver is coming from physically from where when he's on the road?

A. Mm-hmm, I have.

Q. What does the data reveal in that regard?

A. Generally speaking, one of the most important sources of drunk driver factors, if you will, are bars and tav-

erns. I mean studies show the single leading source of origin of drunk drivers.

Q. Are you able to give us, within a reasonable degree of scientific certainty percentages of drivers on the road who are drunk and who are coming from a bar or tavern?

A. One might say, based on review of these studies, where people are stopped and asked where they are coming from and given tests, one might estimate forty to fifty percent of the drivers do come from taverns.

[22] Q. Based on that data, have you formulated an opinion with regard to any law enforcement techniques vis-a-vis bars and/or taverns which could be of assistance?

A. I think one could come to the conclusion that additional civil liability, enforcement of license laws that prohibit service of intoxicated persons, training of service personnel so as to be able better to identify customers who are drunk. The offer of free rides home from bars, are all promising kinds of counter-measures. Based on that position we haven't much experience with it.

Q. Are you familiar with any law enforcement techniques wherein efforts are directed towards — by law enforcement of the bars and the taverns as the wrongdoers?

A. There has been a proverbial story, never been able to trace the original source. The State of New Jersey tried to enforce its licensing regulation with teams consisting of one policeman, one member of the Alcohol Beverage Commission, and the two volunteers. They would go to the roadhouses with the reputation of being particularly problematical. They would sit down, and if they saw somebody leaving after having been served and who they [23] considered intoxicated condition, the policeman would stop the person driving, would take them home and see — would close the place

down for thirty days and fine them three thousand dollars. That was repeated and as I said to have been quite effective in changing the serving practices in the areas concerned.

Q. Do you know of any method, perhaps not proverbial, things you are aware of any methods that could be directed towards bars and tavern owners in your opinion would be effective?

A. I think I have mentioned them, generally speaking enforcement of the licensing laws, and perhaps as well as liberal dram shop legislation a common law proceedings may well be effective.

Q. And is it possible to determine today where high alcohol, high incidents of alcohol related fatalities occur?

A. Yes.

Q. How is that done?

A. You have a FAIR System, covers the United States. The FAIR System, it has some problems and defects, it's fairly accurate. It will give locations of all fatalities and where these fatalities have been tested, will tell us which ones are alcohol [24] related. These can be blocked.

Q. It is possible for law enforcement personnel in the United States today to become aware of the high rate of alcohol accident areas?

A. More so in states that do a more complete job of testing their fatalities.

Q. Have you reviewed any data or studies which would indicate to you whether there is effectiveness in effectuating arrests of drunk drivers by selective patrols of these areas?

A. Yes, I have.

Q. What have you learned in that regard?

A. The study I'm thinking of corresponds to the increasing the amount of patrols. We also start with the fact in no jurisdiction that I know of, are drunk drivers being held, I know no jurisdiction do we — like this, try to apprehend. We are starting from a given level of study, I'm referring to the deals with campaigns to increase the amount of enforcement in given areas. I have reviewed quite a few of these in the United States, and the broad findings have consistently shown that for the duration of these campaigns which tend to be very short run, a month or two, there is decline in fatal crashes, which suggests that [25] a deterrent effect has been achieved on people in that area. They're not doing as much drunk driving as they did before.

Q. Would you refer to that technique as selective road patrol, or are their different terms that are appropriate?

A. I call them police crackdowns.

Q. Thank you. In your opinion, Doctor, what is the single most effective method of putting apprehension into the mind or heart of drunk drivers, which might have a positive effect?

A. I don't know if there's a single best method. That's clearly if the media are invovled in any effective method. All of these crackdowns have achieved media attention. I think a media attention could be shown to be crucial if a crackdown were to be attempted without any publicity, it would very likely not be sufficiently perceived in the community. Therefore, it would not have any effect.

Q. What I'm directing my attention to now is specifically law enforcement methods or techniques which in your opinion, seem to be effective with regard to the manner in which the motorist is actually handled vis-a-vis a stop and the like?

[26] A. I'm afraid I don't follow the question.

Q. Okay. You indicated earlier that you were doing a study in New Mexico which regard to license revocation. What does that refer to?

A. Administration of license suspension is based on Statute which permits the police to lift the license of a driver on the spot. That is the moment that person either fails a breath test or refuses a breath test in New Mexico, we have different penalties. An automatic ninety day suspension for failing the test. A year's suspension for refusing the test. Our law has typically provided that a brief permit is given to the offender at the time the license is taken which will expire either in ten days, or following administrative hearing. If the Defendant does not demand a hearing, licenses in this case, such as administrative hearing, suspension goes into effect. This looks as though it might very well be doing us some good.

Q. Are you aware of any data that exists, data or studies that you have seen which would show license revocation a cost-effective technique?

A. This kind of revocation, this revocation looks very, very promising in the evaluations that have [27] done. If I take your question it would be license revocation seem to be —

MR. O'BRIEN: — Objection, Your Honor, I would ask that the witness be directed to answer the question that was asked.

THE COURT: He's — he can ask her if he's not sure what it was. We will — if you want to ask, you may do that.

THE WITNESS: Is your question is license suspension as effective a penalty as fines or jails? Is that the question?

MS. GORDON: Yes.

THE WITNESS: It seems to be most effective penalty from the point of deterring drivers in general, and from changing behavior of these people who are sentenced.

(By Ms. Gordon, continuing)

Q. Were you able to form an opinion and conclusion on that point?

A. It seems to be the most feared technique in the legal art. No one has ever proposed capital punishment for drunk driving. Within the limit of what we are doing, that seems to be the most concern of these people who are arrested.

Q. More fear than spending some time in jail perhaps?

[28] A. This is based on the report we have from defense attorneys, from prosecutors, from judges, yes.

Q. And what is your opinion with regard to the effectiveness of the campaign, of stepped-up prosecution and enforcement of drunk driving laws as an effective technique.

A. We — our own experience shows in the form of campaign with a limited duration is very likely that there will be less drunk driving, provided it is adequately publicized.

THE COURT: What?

THE WITNESS: Adequately publicized, Your Honor.

(By Ms. Gordon, continuing)

Q. Can you describe for us please what the concept of deterrents is?

A. The idea of deterrents is that a legal threat or for that matter any kind of threat is going to be more effective to the extent that the penalties are severe, that they're certain, they are swift.

Q. And of these three, have you formed an opinion with regard to what effective —

A. — Yes, I have.

Q. What is that?

A. It looks as though existing research strongly [29] supports the effectiveness of penalties that are perceived and relatively certain are more likely.

Q. In your opinion, can deterrent techniques that are utilized by the law enforcement agencies have short run effect, positive effects on drunk driving fatalities?

A. I think they can.

Q. I don't know where to put this thing so you can hear. Is this okay?

What is necessary to effectuate a short run or a short term positive impact in statistics?

A. It is the — perhaps among the relevant public that they have a reasonably high chance of being caught and punished.

Q. Now, you say there's a short term effect. Why do you say short term?

A. In every study that has shown this effect, it has also shown the effect has either disappeared or has tended back toward the previous condition immediately after the fact.

Q. I'm sorry?

A. Immediately after the effect is experienced, which we see in terms of drop in night fatalities, things start going back the way they were before.

[30] Q. And that has to do with the public perception, is that your testimony, what you are saying?

A. My explanation for that is the public is misled by the publicity into thinking that the chances of punishment are greater then they actually are. And that what they are seeing is a learning curve, whereby the public is learning that the chances of punishment are indeed not as high as they were led to expect.

Q. So in your opinion is media publicity of a deterrent campaign a key to any possible short term effect they have?

A. Yes, it certainly is.

Q. And are there any studies you know of which would indicate that a deterrent campaign or a sort of law enforcement would have more than a short term immediate impact on the fatality statistics?

A. No, the longest provable deterrent influence in drunk driving in literature is two years, which took place in Great Britain in 1967, '68.

Q. The other studies indicated from that time whatever deterrent effect has been made begins to recede?

A. All studies seem to indicate the deterrent effect once achieved decays and the life of them tends to be no more than two years in the British case, and [31] usually shorter than that.

Q. Is it your testimony that any deterrent, positive deterrent effect that occurs is due to media?

A. That it is — media are required, it's interaction, I think if the media are lying, it's very likely the effect achieved will last much shorter time. If the media are telling the truth, the public tends to run with it and to exaggerate the amount of risk they are running. We have some studies which show that media attention alone without enforcement can seem to have some kind of deterrent effect. Perhaps reminding them they are, these policemen are out there and they are indeed looking for you. You do run a risk of losing your license and paying fines or whatever if you drink and drive.

Q. Are you familiar with the use of a deterrent effect known as roadblocks, sobriety roadblocks?

A. I'm familiar with attempts to achieve deterrents through roadblocks, yes.

Q. And are you — have you formed an opinion with regard to the use of the roadblock technique, as to what percentage of drivers who go through a roadblock are actually arrested for drunk driving?

A. Yes, these data are available.

Q. What does that data indicate?

[32] A. The data indicates on the order of one percent or even less of drivers who pass through roadblocks scheduled at nighttime are in fact arrested for drunk driving.

Q. Is there any data that you are aware of which would indicate that a drunk driving roadblock effectuates a high rate of arrests of drunk drivers?

A. No, there are no reports to the best of my knowledge anywhere in the world of a high yield of arrests.

Q. And what is your opinion then with regard to the use of drunk driving roadblocks for the purpose of effectuating a high rate of arrests of drunk drivers?

A. It's worthless.

THE COURT: Doctor, it's worthless in terms of the deterrent effect or worthless in terms of arresting drunk drivers?

THE WITNESS: Your Honor, I was asked in terms of arresting drunk drivers.

MS. GORDON: I'm about to get to that, my next question.

(By Ms. Gordon, continuing)

Q. Doctor Ross, are any studies available, or are you aware of any studies out there which would indicate that the use of the drunk driving roadblocks as of today's date are an effective technique for long term deterrence of alcohol related fatalities?

A. As of today's date there are no credible studies that support that assertion.

Q. Are you aware of a study that was done in the State of Maryland?

A. Yes, I was able to obtain a copy of the 1983 document which was the initial or preliminary evaluation of roadblocks in certain counties in Maryland.

Q. What was that report evaluating?

A. It was evaluating a three month crackdown and as I recall two counties, by the State Police.

Q. Was there anything in that report that you became aware of which would indicate to you that there was any type of substantive long term deterrent effect?

A. There was not.

Q. And does that data reveal to you any data with regard to the effect of roadblocks on total fatalities within the targeted counties?

A. There were measures of — numbers of fatalities in the targeted counties and comparison counties. Yes.

[34] Q. What did research data indicate on that?

A. The data showed there were — was increases in numbers of fatalities in the targeted counties.

Q. The fatalities went on to count where the roadblocks actually occurred, according to the Maryland studies, you reviewed —

A. — That is correct, the numbers were so small as I recall, three and eight. The numbers, we could not make anything of that fact. We wouldn't say roadblocks caused death or they caused drunk driving, we simply think that the fatality data do not give us any reason to support the deterrent effect.

Q. Are you familiar with the study that came out within the last seven years or so from the American Bar Association with regard to the use of roadblocks as a drunk driving technique?

A. Yes, there was a report by the Criminal Justice Action, American Bar Association which looked into the general

question of enforcement, and which paid particular attention to the roadblock technique.

Q. And what was the conclusion of that report as you studied it?

A. The conclusion that there was — there was no empirical evidence supporting deterrent effectiveness [35] of these techniques.

Q. I think I am just about finished if I could just have a moment, please.

Doctor, you refer to some deterrent techniques previously which you felt that were in your opinion, had a short term positive impact, I think you said due to media attention and the like; is that correct?

A. Yes.

Q. Is it possible in your opinion that the use of roadblocks would fall into that category as well?

A. It is possible.

Q. In other words, that given additional media attention and the like could have a possible short term effect.

A. The roadblocks, after all, are new. Media like things new. They're what you would call news, they are quite likely to pay attention, and that attention is quite likely to remind them of the general deterrent approach effective in our laws.

Q. The time factor that you have described in some of the other new type of deterrent techniques that have been attempted?

A. Right, I would expect the effect would wear out as all of the others have.

Q. Thank you very much, Doctor. I have no further [36] questions at this time.

THE COURT: Do you think that would be true if there were repeated media efforts of publicizing the roadblocks?

A. I think in the end any technique stops being used, it stops being noticed.

CROSS EXAMINATION

BY MR. O'BRIEN:

Q. Thank you, Your Honor. Patrick O'Brien, Assistant Attorney General.

Mr Ross, my understanding that the percentages that you gave such as twenty-five percent of fatal deaths in traffic accidents involving alcohol and the other percentage that you gave, these are based on other literature, not your own personal studies?

A. Of course I have studied this literature and I am responsible for knowing its content. The figures I mentioned from the National Academy of Sciences.

Q. I see. Now in your testimony, you seem to make a large point of saying, the largest percentage of people being killed are drunk. Does this mean to indicate that you think for some reason they are entitled to protection of the law just as anybody else?

[37]A. Indeed I think one of the paradoxes of the statistic is they indicate nothing that is going to save the life of vic-

tims of drunk drivers — we'll have to save the lives of drunk drivers themselves.

Q. The fact that somebody perhaps has been drinking and a passenger, they also are not entitled to any less protection?

A. Quite right, sir.

Q. The fact somebody has perhaps been drinking and is walking, that does not entitle him or her to less protection under the law?

A. The questions you're asking are my personal opinion, but now from not my professional opinion, I would agree, yes.

Q. You further make the point that if you don't drink yourself, the percentage, this chance of being killed by a drunk driver involved accident is considerably less?

A. If I don't drink in traffic situations, if you drink at home, that's irrelevant.

Q. Do you ever advocate prohibition in regard to the driving?

A. I think the evidence is clear, prohibition is man's way, is not successful as a policy. I have never advocated it.

[38] Q. You seem to indicate that drinking in our society is quite built into the society?

A. That is correct.

Q. So we — is it your position that you must take society as it is and not talk about utopia?

A. I think that's fair, although society as it is, could be

changed I believe in the effectiveness of social policy. I believe in that because I have studied it and seen it.

Q. You indicate where there's a crackdown in bars and taverns this served to effectuate the number of people drinking and driving; is that correct?

A. That's yes, not much study has been made. It makes some sense. We don't have the kind of evidence to justify. It is sensible.

Q. That conclusion is not based on any studies, but based on your own opinion?

A. It's based on anecdotal evidence.

Q. You indicate where selected patrols, a police crackdown, that you can reduce drunk driving; is that correct?

A. There is effectiveness of the crackdowns on drunk driving within the limited time frame in which they are conceived.

Q. Where there is not medial involved with the police [39] crackdown, is that as effective?

A. No, there is not much evidence, but I will give you one example I studied personally. In 1975 the chief constable of a British county decided to demand that these officers enforce or utilize the opportunity to test any driver who's in an accident whether or not it's his fault. Anyone in the moving violation. They did it for a week. And had a very interesting yield. They got a lot more tests, found a lot more drunk drivers, but the media did not know about it. There was no effect on the drunk driving as far as we could tell judging by nighttime fatalities. Later in the summer they repeated this intervention. This time it leaked out and the press discovered it. And there were comments on the drinking and the civil liberties of the people in question. It made a lot of press

within that county. And this time there was a demonstrable impact during the month of the campaign. We could see a decline in the fatalities in that county.

Q. Where there is a police crackdown, any evidence that there is a long term effect?

A. Police crackdowns to the very best of my knowledge, always are limited. This is for Christmas or this is the fourth of July, and this is safety month. I [40] haven't known, and I haven't read of permanent publicized crackdowns of this type. Rather these are limited in duration and relatively short. A month is the longest I come up with.

Q. What is the most effective long term procedure that can be used to reduce drunk driving based on your studies or the studies that you have read?

A. The most effective long term — there really is not incremental procedure more than we are doing it. It has been shown to act over the long term from a deterrent point of view. I am thinking, there is one study that has reported a police crackdown of longer than a month. That's at Stockton, California. As long as the intervention went on, I think it was a year, they were able to show some impact that the police were taking away things. And then it went back to how it was before. I will correct my previous testimony. I just don't think we know at this point anything that we can do in the way of law enforcement that we can rely on as having a permanent effect on drunken driving other than what we are doing already.

Q. Have you ever studied in these countries where drunk driving is a capital offense as to what effect [41] it had in these countries?

A. I don't know if there are any countries where drunk driving is a capital offense.

Q. Could you identify the countries where drunk driving is a capital offense?

THE COURT: Perhaps we out to define capital offense. It may have a different meaning for different people.

THE WITNESS: You want to define that?

(By Mr. O'Brien, continuing)

Q. Are you aware of any countries where drinking and driving could be punishable by execution?

A. I am not. The Library of Congress is rather void in the international literature on drunk driving laws. And as I recall I came up with no place in the world where drunk driving is a capital offense. There was a letter once in Durabi (phonetic), as I recall, which made all sorts of assertions about what happens in Rosstania. Marked in death, left for the cross. That is completely — not backed up from one source to the next. No truth in it.

Q. You indicated the media plays a large part in any type of long term effects on any operations; is that right?

A. Any short term effect.

[42] Q. Would it be true, is there a correlation between the fact of media attention and longer effect of a specific program?

Q. I think this is reasonable.

Q. You indicate if the media is lying, then it would have more short term effect?

A. If your personal experience says that, well, I haven't seen any of these police patrols or roadblocks on my block and my friends don't report any. It's reasonable to think that

Lincoln was right, you can't fool everybody all of the time.

Q. You're not then accusing the media of ever lying?

A. I wouldn't think so.

Q. Going then to sobriety checkpoints, I think they're also called sobriety check lanes. Is that true in the literature they carry several different names?

A. Yes.

Q. Would it be true, sobriety check lanes or checkpoints for the short time have shown to have some positive effect as far as deterrent?

A. That is correct.

Q. Isn't it true your own studies have shown that?

A. Particularly the French law which had mandatory breath tests for everybody going through, regardless of the cause of suspect.

[43] Q. Isn't it true that the Maryland study as far as drunk driving accidents showed a deterrent effect?

A. I would say that they showed there were fewer accidents the following year that the police judged were attributed to alcohol. However, the police judgement is not accepted as valid measure of the amount of drunk driving. And the method of comparing one year with the other is not considered an appropriate type of measurement.

THE COURT: By whom?

THE WITNESS: Social Sciences as evaluation researchers, Your Honor. The reason being that there is — there is so many other things that happened between these two years,

none of which have been controlled, for there aren't long term trends to date which have controlled. In other words, for instance, we are experiencing year after year a decline in the fatality rate on the highway, going on since 1920. So that in general any one year is going to look better in fatalities than the previous one. If you claim like what I did, you may just be claiming for yourself a long range trend. We have random variations from year to year. There was not effort in that study to try to show that the change was greater than you would expect [44] from general variation.

Q. I see. You do say there is evidence of a deterrent effect on the short term than as to lives saved?

A. Yes.

Q. Would you agree any life saved is worth the saving?

MS. GORDON: Objection, Your Honor, to this witness responding.

THE COURT: He's asking for personal opinion, and I suspect most of us know what the answer is. Go ahead, Doctor, for the record.

THE WITNESS: Saving any life is worth saving. I don't think of any exception at the moment.

(By Mr. O'Brien, continuing)

Q. Thank you. I would like to have this marked, please.

(Whereupon the Reporter marked Defendants' Exhibit Number 1.)

(By Mr. O'Brien, continuing)

Q. This has been marked as Defendants' Proposed Exhibit 1, and I ask if you recognize that document?

A. I certainly do, I wrote it.

Q. What is that document?

A. This is a piece of paper that was written for the Journal of Studies on Alcohol a Research Foundation Conference in Baltimore. It has been printed along with other papers given at the conference. The [45] Journal on Studies on Alcohol.

Q. What is the date of that particular Journal?

A. This is July, 1985.

Q. That's a recent paper and a recent Journal, is it not?

A. The material was written towards the end of 1983 in the delay being — when they were — this would be current at the end of 1983.

Q. The information is this particular Journal, the article, do you still hold to these statements?

A. I assume so, I haven't had a chance to read it over recently.

Q. With the permission of the Court, I would ask that you read from the section —

A. — Mm-hmm.

Q. — beginning where it says sobriety checkpoints.

A. Mm-hmm.

Q. And ending where that particular provision stops.

A. Mm-hmm.

Q. A long section to read —

THE COURT: You want him to read it out loud?

MR. O'BRIEN: I would like him to read it out loud.

MS. GORDON: I would object at this [46] point until there's a request with regard to the nature of the document itself, with regard to him to simply reading it into evidence.

MR. O'BRIEN: Your Honor, this —

THE COURT: Read it to yourself, Doctor. You may question him on it.

MR. O'BRIEN: Fine, Your Honor.

(By Mr. O'Brien, continuing)

Q. Again, Doctor, is it still your position?

A. It is still my position.

Q. Is it your position that sobriety checkpoints are an enforcement technique with high visibility with theoretical potential to increase the perceived certainty of punishment among drunken driving law violators?

A. Mm-hmm, yes.

Q. Is it your understanding that they are currently being applied in as many as twenty-one states?

A. It is.

Q. Since the material is written, have there been found additional states that have adopted this procedure?

A. I know personally of at least one, I assume perhaps more also. In some states, Courts have held they are unconstitutional. In some that they're [47] Constitutional. I would guess about the same or more in total.

Q. In your report you indicate that the intensive use of checkpoints was made recently in the state of Delaware, Maryland. Delaware used the checkpoint state-wide between December 1983 and August 1983 reporting ten percent decrease in injury accidents and thirty-two percent decrease in alcohol related injury accidents during the checkpoint, as compared with a previous patrol period.

Montgomery County, Maryland reported seventy-five percent decline in deaths from alcohol related accidents during the checkpoint period from July 1982 through July 1983, compared with a prior baseline. Is this based on your own research of these particular actions?

A. Based on my reading of their reports and in context I say the report cannot be determined by — they are scientifically deficient.

Q. Based on these reports that was your understanding?

A. That's their claim and the claim, of course, they achieved these results.

Q. Please just answer my questions.

Do you as part of a deterrent recognize this particular article, the fact that people estimate [48] a higher likelihood of arrest for drunken driving in the checkpoint areas than in comparison areas?

A. You're talking about different studies. In Montgomery County and Fairfax County. Their estimate was higher likelihood of arrest, no reported change in drunk driving behavior.

Q. I see. However, there is public perception, is there not, at least what that particular study indicated, that there is a higher likelihood of being caught?

A. Yes, there they reported —

Q. — It translated into deterrent effect?

A. Apparently there's no evidence it did translate in that case, but there was evidence it did not translate.

Q. You indicate in other studies there was deterrent effect where check lanes had been used?

A. Not in Montgomery County or Maryland.

Q. Please listen to my question. In other studies there has been indication that there is a deterrent effect?

A. Short range deterrent, yes.

Q. Is it your testimony that the evidence on checkpoints in encouraging but not persuasive in light of translating into deterrent theories, or a checkpoint [49] may be considered a high priority matter for policy analysis?

A. Provided checkpoints are ethical and Constitutional.

Q. I understand that. We assume at this point, is that still your position?

A. That is still my position.

Q. Thank you.

THE COURT: I understand your position. Still requires a great deal of study to come up with a definitive opinion?

THE WITNESS: Yes, sir Your Honor. The evidence at the moment is incapable of supporting any claims that the deterrent over the long run has been achieved by checkpoints. Or for that matter, our law enforcement techniques.

(By Mr. O'Brien, continuing)

Q. I see. I understand that you are currently on the Committee on Alcohol and Drug Abuse; is that true?

A. Alcohol and Other Drugs of the National Safety Council.

Q. That's the Highway Traffic Safety Division of the National Safety Council; is that true?

A. I can't remember the exact bureaucratic location.

Q. Approximately how many people are on this particular committee?

[50] A. Thirty or forty.

Q. In the last meeting, October of 1985 in New Orleans, is it true this particular committee took and made a policy statement in regards to check point check lanes?

A. There was a hurricane in New Orleans at the time, and my plane stopped in Dallas and I never got there. I had read the minutes. I just don't recall now what the outcome was.

Q. I would like to have this marked.

(Whereupon the Reporter marked Defendant's Exhibit Number 2.)

(By Mr. O'Brien, continuing)

Q. I'll give you what has been marked as Defendants' Proposed Exhibit 2 and I would ask that you read that.

MS. GORDON: I believe if we could have it identified, could we have identification of the document, please, Your Honor.

MR. O'BRIEN: This is the position, statement of the High-

way Traffic Safety Division taken in New Orleans in October of 1985.

THE COURT: Normally that would come from the witness chair, I will permit you to testify this morning.

[51] MR. O'BRIEN: Thank you, Your Honor.

(By Mr. O'Brien, continuing)

Q. Mr. Ross, is that as I have purported it to be in fact a policy statement made by the Highway Traffic Safety Division of the National Safety Council?

A. It appears in the minutes of the meeting, and I think that's fair.

Q. This is — you are a member of this committee which is part of the division of the National Safety Council?

A. That is correct.

Q. You agree with the policy statement, that of the National Safety Council that they would urge all drivers nighttime moving in relation of crashes — strike that.

Use passive alcohol sensors to screen all drivers involved in nighttime moving violations and crashes, road safety checks, is that your understanding of part of this policy?

A. I understand that's an example of the general point they're trying to make which is that we need to show with necessary worthy kinds of police activities in order to attract the attention of the public. To legally threaten, one example of several that they give, passive alcohol checks, like a sample of the breath, you go up to a driver and you say this is a [52] safety check, you know what that means. He says yes and you give it to them.

Q. Wouldn't you agree, are you familiar with the Michigan sobriety checkpoints?

A. I read the guidelines for it, as much as I know.

Q. Wouldn't you agree the fact that we don't use passive alcohol sensors, would it be less intrusive —

MS. GORDON: Objection, Your Honor, calling for legal conclusion. I'm not sure what Counsel is referring to intrusive. It does have a legal connotation.

THE COURT: She's right, Mr. O'Brien. I'm sure you can word it differently and get the answer.

(By Mr. O'Brien, continuing)

Q. Wouldn't you agree that the Michigan sobriety checkpoints would fall within, fall within the recommendations of this policy statement of your Committee on Alcohol and Drug Abuse?

A. I think so.

Q. I have no further questions of this witness.

THE COURT: Any redirect?

MS. GORDON: Just a few, Your Honor.

REDIRECT EXAMINATION

[53] BY MS. GORDON:

Q. Is it correct, Doctor Ross, that any new deterrent technique that occurred with attendant media publicity as an exposure and the like would have a potential for deterrent?

A. Yes.

Q. Okay. And getting back to your discussion about the purpose of media publicity and so, you mentioned a learning curve. Could you describe what you meant in that regard?

A. When these police crackdowns are introduced, we see a decline in nighttime fatalities which indicates people are doing less drunk driving. Immediately following the point of intervention, let's say a new law comes into effect putting the police out there on the highway January 1st. Immediately following that, things seem to go back to the way they were before. I interpret that as the result of public learning. That's the note that was publicized, was not as severe as expected.

Q. What is your opinion with regard to the deterrent effect of a program which effectuates a very small number of arrests. Once the public perceives that to be the facts?

A. The effectiveness would die out and the deterrent [54] effect would die out.

Q. It is your point once the public is understanding they have a low apprehension of being arrested, the initial good, the positive impact wears off?

A. It seems to again and again throughout the world, yes.

Q. Okay. You would say that a roadblock deterrent has the same position known for a short time immediate impact in fact as other new techniques?

THE COURT: Ms. Gordon, we seem to be going over the same ground again and again.

MS. GORDON: I'll move along, Your Honor.

(By Ms. Gordon, continuing)

Q. What would your opinion be of the deterrent nature of a roadblock program wherein throughout the State of Michigan on any given weekend night there would be one roadblock in the State and the public would be aware of the fact there was one roadblock and be advised in advance what the County the roadblock would occur in?

A. Common sense would suggest it wouldn't be very threatening to those people living outside the County. And it might actually be counted productive as a deterrent by assuring that the [55] residents elsewhere in the State, significant police resources were being directed to the market some place where you are not.

Q. Thank you, Doctor.

RECROSS EXAMINATION

BY MR. O'BRIEN:

Q. You would agree, Mr. Ross, in regard to that one particular County where the roadblock was in fact, it was well covered by the media and that would have the certain potential for deterrence?

A. That's an overstatement, it is made in deterrent threats.

MR. O'BRIEN: Thank you.

MS. GORDON: Nothing further, Your Honor.

THE COURT: Thank you for being here today, Doctor. Wish you luck in going back to some place like New Mexico, Have a good trip. I think we will take a short recess.

(Whereupon the Court adjourned at or about 10:50 A.M.)

[Testimony of Gerald L. Hough. Transcript vol. I]

[72] Q. It is correct there were thirty-five recommendations made in the Drunk Driving Task Force Report?

A. Yes.

Q. And these thirty-five recommendations — excuse me — directed themselves to what?

A. Anywhere from educational programs to administrative licensing to sobriety checkpoints.

Q. They were all methods of getting drunk drivers off the road, is that the purpose of the recommendation?

A. Well, it was all the main purpose was to reduce drunk driving. To either confine them, to deter, to educate.

Q. The task force came up with thirty-five different ways this might be accomplished?

A. Yes.

Q. You would agree, wouldn't you, that the checkpoints were not weighted — were not weighted actually more heavily than any of the other thirty-four?

A. There was more discussion on the checkpoints than any other that I recall.

Q. But with regard to the conclusions reached by the task force itself, you did not weight the recommendations [73] in order of —

A. — The thirty-five recommendations are not in priority listing.

Q. And that the — excuse me — that the Drunk Driving

Task Force did not weight its recommendations any more heavily than any of the others?

A. No.

Q. All right. Do you have any idea, Colonel, what became of the other thirty-four recommendations made by the Drunk Driving Task Force?

A. I'm not aware of any of them being implemented.

Q. Would it be correct, you felt that these thirty-four other recommendations were also good, good things to try?

A. Some of them are, yes.

Q. You're not aware of any of them being implemented?

A. No.

Q. To your knowledge, the State Police are not doing anything with regard to the other thirty-four at this time?

A. No.

* * *

[82] Q. Observation — with regard to the way your plan is [83] implemented, Plaintiff's Exhibit 1, how many officers did your plan call for normally being on the scene?

A. I believe we call for a minimum of about eight and up to twelve.

Q. Does that include sheriff's deputies that you will be utilizing?

A. Yes.

Q. Combination of Sheriff's Department, Department of Michigan State Police personnel?

A. Yes.

Q. It is correct, is it not, you always have a commanding officer?

A. Yes.

Q. What rank commanding officer do you require being on the scene for one of these checkpoints?

A. Lieutenant or above.

Q. Whatever rank, he should be a rank of lieutenant or above must be present?

A. Yes.

Q. It is true, is it not, Colonel that your purpose in effectuating or attempting to effectuate this Checkpoint Plan is not to obtain large numbers of arrest of drunk drivers?

A. That is correct.

Q. Is it correct, is it, as far as you are aware, other [84] states that have tried this have not found they are getting a high rate of arrests?

A. Yes, that's my understanding.

Q. What was your purpose then, Colonel, in attempting to implement this plan if you don't intend to use it to get drunk drivers arrested?

A. Deter them from drinking and driving.

Q. Now Colonel, have you seen any data of any kind which would indicate to you that these roadblocks are effective as a deterrent?

A. Yes.

Q. You have seen data?

A. Yes.

Q. What have you seen, Colonel?

A. Well, I have seen some reports out of Maryland and Delaware, and hear testimony by people from Maryland and Delaware. I have seen one brief report out of Illinois which spoke to the costs of arresting drunk drivers. Cost analysis between general patrol and checkpoints.

Q. Maybe I should change my questions slightly.

Before you implemented these roadblocks, Colonel, had you ever seen any data, any empirical data which indicated to you these roadblocks had a deterrent effect?

[85] A. What I saw, seen, indicated we had testimony from the Drunk Driving Task Force from the State of Maryland. And I recall some papers brought along — based upon the testimony I was convinced they were at least worth looking at.

Q. My question again as to data, I don't mean to belabor, it is true, isn't it, you never actually saw any data other than you are taking the people from Maryland and their word these things have been effective?

A. I would say that is true.

Q. All right. You yourself haven't seen any statistical analysis in order to determine these would be an effective deterrent?

A. I personally have not.

Q. All right. Do you know what the arrest rate in Maryland has been?

A. No.

Q. Do you know whether or not the rate of Maryland — excuse me, rate of fatalities in Maryland was effective, vis-a-vis the checkpoint program they used there?

A. I don't recall anyone.

Q. You don't recall any more — was there a time you did not?

[86] A. As I indicated, I had seen it on testimony from the State and these statistics have been brought up. I don't recall what they are any more.

Q. It is true, isn't it, you haven't actually read and reviewed yourself studies out of Maryland?

A. No.

Q. Vis-a-vis the checkpoints, is that correct?

A. No, that is correct, I have not.

Q. Is it correct in Michigan they are basically utilizing the Maryland program as a model?

A. Yes.

Q. Is it true then actually you don't have any evidence or data these checkpoints would be an effective tool in Michigan?

A. To have hard evidence and data, I would say that is correct. We are attempting to develop here in Michigan.

Q. Okay. And really you are just hoping here in Michigan they may have effect, is that true?

A. I think they will have effect.

Q. You base that on no data or evidence of an empirical nature?

A. Not of an empirical nature.

* * *

[94] Q. Now, what is the plan, Colonel, with regard to number of roadblocks set up on any given weekend night in the State of Michigan?

A. We are incidentally only prepared to do one at a time.

Q. Is it correct you will announce in advance to the public the County that the roadblocks or checkpoints will occur in?

A. Yes.

Q. How will you do that?

A. By notifying the media, both papers, radio and television.

Q. How much in advance of setting up the check lane do you give notice to the public?

[95] A. Some time in the twenty-four hour period.

Q. You anticipate the media will disseminate this information to the public, is that the plan?

A. Yes.

Q. It is your opinion at this time to implement the checkpoints on expressways?

A. No.

Q. And what is your plan with regard to utilizing checkpoints during bad weather?

A. We would not use them during bad weather.

Q. You would simply not set them there or call them off if bad weather occurred?

A. Yes.

Q. That would be true of both rain and snow conditions?

A. Yes.

Q. Now as a driver comes through this checkpoint, Colonel, who actually is the individual whose questioning and talking to the drivers as your plan is set up?

A. A trooper, deputy, City police officer.

Q. It would be any one of the personnel that were on the scene, it would be a State Trooper, police officer, county sheriff, or it could be a township [96] police officer?

A. Yes.

Q. Who is it that makes the decision as to whether or not the individual driver who has now been stopped will be pulled over for the further questioning and/or testing?

A. The officer who makes initial contact.

Q. It's the State Trooper, the County Sheriff or the township police officer?

A. Yes.

Q. It's up to that individual to make the assessment?

A. Yes.

Q. And to use their own discretion in that regard?

A. Yes.

Q. And are they supposed to look for certain things when the car pulls up?

A. They are looking for intoxication.

Q. They're supposed to make their own assessment as to what is indicated?

A. Yes.

* * *

[125] Q. Would the rank of the sobriety checkpoints diminish or impact significantly on any of the other programs?

A. In the way we are doing it right now, by using a core, a group of troopers, it will have a very, very minimum, if any, effect on the other posts or areas, as we use sheriffs, townships or city, whatever, they schedule overtime to do that, or they put their officers out there on general patrol, could have impact during that particular time period of the sobriety checkpoint.

* * *

[141] Q. To your knowledge, in the Maryland study, the part you reviewed, the check lanes are not an effective tool for arresting drunk drivers?

A. They have not relied upon the number of arrests to judge the successfulness in my understanding.

Q. So when you testified earlier there is no data which would show whether or not this deters or does not deter out of Maryland, it is also true there is some data which does speak to the effectiveness vis-a-vis the Maryland case, correct?

A. I understand there's no data out of Maryland or Delaware, both. I do not recall any of it.

[Testimony of William H. Hackel, Transcript vol. I]

[143] WILLIAM H. HACKEL, having been duly sworn by the Clerk of the Court, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GAGE:

Q. State your name, please:

A. William Hackel.

Q. Your occupation and profession?

A. I am Macomb County Sheriff.

Q. How long have you held that position?

A. My tenth year.

Q. Prior to that time, what did you do?

A. A member of the Sheriff's Department as a deputy [144] sheriff in supervisory capacity for the past twenty-three years.

Q. And you have been Sheriff, as you said, for ten years, I'm sorry?

A. Yes.

Q. You are also involved in the Michigan Sheriff's Association?

A. Yes, I am.

Q. How long have you been in office in that association?

A. Yes, sir.

Q. What is that office.

A. I'm currently president of the Michigan Sheriff's Association.

Q. How long have you held that position?

A. The past ten months.

Q. Sir, are you charged as Sheriff in Macomb County with the duty of enforcing the drunk driving laws in the State of Michigan?

A. Yes, I am.

Q. Have you developed or adopted any programs in Macomb County for the purpose of detecting and reducing drunk driving accidents and fatalities?

A. In addition to the routine function of the deputy sheriffs on patrol, we have a program in Macomb County that I project, Alcohol Detection Project, which is [145] Federally funded to pass through the offices of the Highway Safety Planning, which is housed in Lansing. I think it's in the Department of State Police have provided us with funds to be disbursed throughout Macomb County. And I disburse these funds to every law enforcement agency in Macomb County.

Q. And what is the method used in that program with reference to reducing fatalities in accidents as a consequence of intoxicated drivers?

A. We use the statistical information that showed up where in Macomb County drunk drivers cause accidents that cause injuries and fatalities. We identify these highways and the days of the week and the hours of the days that these

accidents were caused by drunk drivers. And what we did is we took this money and we scheduled additional officers, deputy sheriffs and city and township police officers at every time basis, to adequately enforce for the specific crime.

THE COURT: As an aside, Sheriff, how do you determine the high accident areas? Do you do your own work or through the Michigan State Police?

THE WITNESS: That information was developed and was obtained through the Michigan State Police.

(By Mr. Gage, continuing)

[146] Q. How long have you been conducting such an accelerated patrol program?

A. Two and one-half years.

Q. Do you have an opinion as to its effectiveness?

A. Well, I believe it is effective, I know it is effective in making arrests. The number of drunk drivers has increased tremendously. The officers are, I believe because of their inter-action with the program, are more attuned, have been trained in how to identify and arrest drunk drivers. And it's a program the requires the officers to be effective and to look for the drunk drivers. I think the arrest statistics have shown a drastic increase. I don't have them with me. But I know that they show substantial increase in arrests for drunk drivers in Macomb County.

Q. During the period for this special program?

A. Yes, sir.

Q. You are aware that the Michigan State Police have

instituted a so-called Sobriety Check Lane Program in this State, is that correct?

A. Checkpoint Program, I believe so, yes.

Q. Checkpoint or Check Lane, and it is your understanding that it is your understanding that this would be a stop of all vehicles approaching a certain area of [147] the roadway?

A. As I understand it, the plan works where you stop every vehicle that comes down the highway. That's my understanding of the Checkpoint Program.

Q. Is it further your understanding that approximately eight to twelve officers to be involved in that process and State plan?

A. That's what I'm led to believe, yes.

Q. Based upon your twenty-three years of experience, and based upon your twenty-three years as Sheriff of Macomb County, and do you have an opinion as to whether or not the Check Lane System as proposed to be utilized by the Michigan State Police, is a more effective method of deterring and/or arresting drunk drivers and reducing deaths or injuries from drunk driving?

A. As compared from other programs?

Q. As to — I'm contrasting to patrol or any other program that you are aware?

A. I believe there are more effective means of arresting drunk drivers, and the utilization of that kind of manpower, I think there are more effective ways to do that.

Q. What are there more effective ways than check lanes?

A. A similar program, such as are done in Macomb County, [148] we are not the only County that does them, where you target these areas, and the officers are trained to identify people that appear to be intoxicated and pull them over and make arrests after the proposed checks are taken, or any other violations of law that occur. I think it's a more effective — there are more effective ways of dealing with the drunk driver program. And at the same time other law enforcement functions can be looked into also.

Q. In other words, if a program is directed primarily towards arresting or detecting drunk driving, and the officers who are engaged in that activity at that time are not engaged in other investigatory activities, then you deem that to be less effective use of the resources; is that correct?

A. I'm not exactly clear on what you just said.

Q. I'm wondering, you indicated in your answer that the officers in concentrated patrols, would also be patrolling for other purposes other than just drunk driving; is that correct?

A. Yes, the primary objective and reason for the funding is to apprehend drunk drivers. But, under our program they're not precluded from making any other arrests or taking care of any other violations. My understanding of the Checkpoint is that eight to [149] twelve officers that are utilized are only allowed in my opinion, with their hands severely tied, to deal with persons that they feel are intoxicated, and as I understand, that is about all they are allowed to do. I think the other programs do that, too. And I think it's more effectively, and they are free to take care of other activities that come within their observation.

Q. Sir, if you were allocated a certain amount of money to cover the cost of a Check Lane Program, but you had the

discretion to utilized these funds in some fashion other than the check lane, as administrative, would you choose another method of drunk driving enforcement, other than check lanes?

A. Yes, I would.

Q. The reason that they're more effective?

A. I think they are more effective and more efficient use of manpower, the other programs are.

Q. Thank you very much, sir. I have nothing further.

CROSS EXAMINATION

BY MR. O'BRIEN:

Q. Is it Sheriff Hackel?

A. Yes, sir.

Q. Sheriff Hackel, you have indicated that you are the president of the Michigan Sheriff's Association; is [150] that right?

A. Yes, sir.

Q. Does the Michigan Sheriff's Association oppose the Sobriety Checkpoint?

A. The Association has no position on that issue.

Q. If, as a result of having run this pilot program, that in Michigan, these prove to be effective in regards to either deterrent or arrests, would you be willing to try them in Macomb County?

A. Well, if — I am sure any Sheriff like myself, if we felt that the checkpoint lane or any program was the best alternative to deal with the drunk driving problem, then I'm sure that that will be considered and probably utilized.

Q. Were they proven effective in deterrence, would you wish to use them either on a trial basis or permanent basis?

A. If they have proven to be a deterrent, is that what you said? Would I be willing to use them?

Q. Would you wish to use them as either a temporary program or as an alternative, a permanent program?

A. (No response.)

Q. In your county?

A. From what I know today, what I understand about checkpoints or check lanes, I would prefer to use the [151] program that we use in Macomb County now. But, you said was that if it was shown to me as a law enforcement administrator that the checkpoints or check lanes were more efficient use or more effective use of manpower, then certainly that would be a consideration, and any police administrator would have to take into consideration probably utilizing that. That's what we do, we try to figure out what is the most effective utilization of our manpower, because of our limited resources.

Q. Certainly. I understand you have not implemented sobriety checkpoint ever in the past in your county; is that true?

A. Not to my knowledge.

Q. You have no personal data in regards to whether they would be effective, or at the time, not of our own data in Macomb County?

A. That is true, I do not.

Q. Are you aware of a study that was done in Oakland County, which borders Macomb County, that had concentrated patrols in certain areas?

A. I'm aware that Macomb and Oakland County has had an alcohol program. I'm not aware of the specifics of the program.

Q. Do you known what the result of that stepped-up patrol [152] program was that was instituted in Oakland County?

A. No, I do not.

Q. Now, there has been some questioning here whether Sheriff's deputies have the sufficient training or knowledge in order to determine somebody who's been drinking? What type of training do your people get in regards to detecting a drinking driver?

A. Well, we all go through the deputy sheriffs and the State Troopers and the city police and the village police, all basically go through the same Police Academy originally, where you receive your basic training. And then, of course, you receive the additional training, and your street officer of some experience, what you do is you learn through experience to detect whether or not a person is too intoxicated to drive. You learn by what you observe and what the breathalyzer results show. And over time I think there's a knowledge acquired there.

Plus, we utilize Macomb County this device called a preliminary breath tester, which is an indicator that is provided through this grant I was talking about in Macomb County to every law enforcement agency which assists the officer, whether they're deputy sheriffs or city police officers. They make a stop for someone suspected of drunk [153] driving. You utilize this preliminary breath tester and it is further tool

to aid the officer in making a decision whether to bring the person in to jail, the County lockup or whatever to take more breathalyzer tests.

There is additional training given, particularly in the area of preliminary breath testers and the program has been training officers. We provide through our department as a result of our grant.

Q. Based on your personal knowledge, and as president of the Michigan Sheriffs' Association, do you have an opinion whether sheriffs' deputies throughout the state would be capable of participating in a sobriety checkpoint such that they would be able to make the same type of judgments in regard to viewing somebody and determining odor and et cetera, whether that particular person goes through a sobriety checkpoint has been trained?

A. Well —

THE COURT: Pretty convoluted question, isn't it?

MR. O'BRIEN: Let me rephrase it.

Thank you.

THE COURT: Do you think your sheriffs [154] can do as well as the State Police in picking out a drunk driver?

THE WITNESS: If that's the question, the answer is definitely yes.

MR. O'BRIEN: Thank you, Your Honor.

THE COURT: We are here just to please.

(By Mr. O'Brien, continuing)

Q. From your concentrated patrols, have you amassed your data into a study?

A. It is being amassed into a study. The program is a three year program which ends on September 30th of this year, and knowing the Office of Highway Safety Planning, some months after the program ends in getting a rather thick document together and they will tell us in their opinion whether it was a success or not.

Q. Based on the number of drunk driving fatalities in your county, have you already been able to determine whether or not this has a deterrent effect?

A. Well, the statistics are an interesting thing. In my opinion, I think it had an impact. And again, I would base that upon last year's positive record meaning fewer fatalities last year. That makes me feel good, that maybe this program we have is responsible for it. I learned a long time ago that [155] it's very difficult to plug out any one thing and say that is the reason for success or reduction of any problem or crime. So I'm interested in this final report.

Q. Each of the three years that you have had this program going, have you — your drinking and driving statistics in regards to fatalities have gone down?

A. I'm not sure that I can say that. I could tell you our arrests have gone up again on statistics.

Q. That's my question, can you tell me whether at this time they have gone down?

A. Again, that's the kind of answer that you can't give until you have the final data. You will have — I think you are well aware that final information whether or not it's regarding fatalities or accident situations or crimes, usually wind up a year behind when you would like to know the information.

Okay, what I can tell you here is that our arrests have gone up.

Q. So again, we have to interpret that at this point, you know, that arrests have gone up, you don't know the deterrent effect, you're waiting to see what the report says?

A. Yes, sir.

Q. And once more, if it turns out that sobriety checkpoints [156] while perhaps not increasing arrests, does help in the deterrence of fatalities, would you be willing to augment your present program with this program?

THE COURT: I think he's already answered that, Mr. O'Brien. He's willing to look at any successful program.

MR. O'BRIEN: I have no further questions.

THE COURT: Sheriff, what is your idea of the main purpose of check lane or checkpoint process?

THE WITNESS: Well, as I understand, it's main idea of the checkpoint, I'm going to base it upon what I understand about check lanes.

THE COURT: I am asking for your thinking.

THE WITNESS: It is one, to a deterrent program, first of all. I think that probably might be the one thing that I would think of, if anything you could give it credit to. And it secondly would be to apprehend drunk drivers that come actually through the checkpoint.

I'm skeptical as to how effective that will be, based on what I understand the restrictions placed on the officers are

that work it. I would think that a checkpoint, if I had to [157] give it some merit in my opinion, it would be to the media attention given to it more than the actual application. That would be my opinion.

THE COURT: Thank you, Sheriff.

REDIRECT EXAMINATION

BY MR. GAGE:

Q. Just a couple of questions. The Michigan Sheriffs Association has in the past come out opposed to check lanes?

A. Check lanes, yes, sir.

Q. Since that time, has Colonel Hough visited the meetings of the Sheriffs Association?

A. Yes, he has.

Q. Did he keep trying to explain the difference between check lane and checkpoints, this information bring to you at the meeting between these two entities?

A. Yes, and I think it was February of this year Colonel came to our board of directors meeting and asked us to support the checkpoint concept.

Q. As opposed to check lane?

A. (No response.)

Q. Did he explain the checkpoint as opposed to check lane?

A. Well, he said it was different, and it was in the process of being developed. But that would be somewhat different than check lanes, yes.

[158] THE COURT: Did he tell you what the difference was?

THE WITNESS: No, sir, in answer to that he did not.

(By Mr. Gage, continuing)

Q. Did you take a vote on whether or not you would support this new program he did not explain to you?

A. Well, no, what I did as president of the Association, I really precluded the board from taking a vote. It seemed to me we couldn't convene on that if we didn't know what it was. What I did was I assigned somebody to monitor the development and the program and when it was formulated, it would come back to the board of directors or the Michigan Sheriffs Association, and at that time we would look at what the checkpoint was, and we would then take a formal vote. This is not occurred yet.

Q. That will take place some time down the road?

A. I assume so.

Q. Without statistics and figures or anything else, but drawing upon your twenty-three years in which you understand to be sobriety check lanes or points of operation, is it still your opinion that there are more effective methods of police utilization of police resources for reducing drunk driving; is that [159] correct?

A. Yes.

Q. Thank you, sir. I have nothing further.

MR. O'BRIEN: I have nothing further.

THE COURT: Thank you, Sheriff.

MS. GORDON: We will call Sheriff Thomas Edmonds, Thomas M. Edmonds.

THOMAS M. EDMONDS, having been duly sworn by the Clerk of the Court, testified on his oath as follows:

DIRECT EXAMINATION

BY MS. GORDON:

MR. GAGE: I'm sorry, is the witness free to go?

THE COURT: Any reason why Sheriff Hackel can't be excused?

MR. O'BRIEN: No, Your Honor.

MR. GAGE: Thank you, Your Honor.

[Testimony of Thomas M. Edmonds. Transcript vol. I]

[159] DIRECT EXAMINATION

BY MS. GORDON:

Q. Sheriff, would you please state your full name and your current position?

A. Yes, ma'am. My name is Thomas Edmonds, I am Sheriff of Kalamazoo County.

Q. How long have you been Sheriff of Kalamazoo County?

[160] A. Since June 25, 1984.

Q. Prior to that time, what were you doing?

A. I was Undersheriff of Kalamazoo County from June 1st, 1981.

Q. And prior to becoming Undersheriff, what were you doing?

A. I was Assistant Prosecuting Attorney for the County of Kalamazoo.

Q. How long had you been Assistant Prosecuting Attorney?

A. From October of 1975.

Q. How many sheriffs deputies are in your department?

A. We have one hundred sixty-seven employees. I believe one hundred ten of them are sworn.

Q. One of your duties as Sheriff of Kalamazoo County is to enforce the law with regard to drunk driving in the State of Michigan?

A. Yes, ma'am.

Q. Okay. Have you attempted to do that in Kalamazoo County?

A. Absolutely.

Q. How have you attempted to do that?

A. In the traditional fashion of road patrol using uniformed officers in marked cars, and we have from time to

time had occasions to enforce these laws, to use many concepts. The primary thrust is to use [161] patrol people to observe for more violations of the law.

Q. Have you had directed patrols at any time?

A. Directed patrols? Since my employment, we have not had a grant that specified directed patrols, so no, we have not in my tenure.

THE COURT: What kind of a patrol?

THE WITNESS: Directed, specialized.

(By Ms. Gordon, continuing)

Q. Would you tell us, please what a directed patrol compared to non-directed?

A. Certainly. I think that at least my understanding would be that directed patrol would be any patrol which is specifically targeted for a type of offense or type of activity, i.e., selective traffic, pursuit of OUIL. Non-directed is patrol time in the discretion of the officer, within the certain departmental policies where they go and what they do.

Q. Do you view your patrol system to be an effective way of combating drunk driving in the County of Kalamazoo?

A. Given our statistics comparison with the Defendant, we are — yes, we are very successful. In comparison of national averages as a factor or not, something that I can't say. But we do the best we can. I think [162] our efforts are worthwhile and effective, yes.

Q. What do you do as a positive factor in your non-directed patrol system you use?

A. As relates to OUIL?

Q. Yes.

A. As it relates to drunk driving enforcement of non-directed patrols gives us the ability to reach out through the entire County and to be in specific areas we know to be from the accident investigation information, particularly susceptible to drunk driving accidents. At this time these appear to be predominately the same, and gives us ability to be on a number of roads and within the County, and moving, which gives us another advantage to be able to observe actual driving for drinking driving or for other difficulties with the driver.

Q. Are you familiar with the concept of Checkpoint or Check Lane Program in order to stop all drivers to apprehend those who have been drinking?

A. Yes, ma'am.

Q. Are you familiar with the case currently set forth in these guidelines in the State of Michigan through the Michigan Department of State Police?

A. Yes, ma'am.

Q. How are you familiar with that?

[163] A. Some time ago I was contacted by the Director, Colonel with the Fifth Police District to see if I'm willing to participate in test of sobriety check lanes within Kalamazoo County and in conjunction with the State Police. As a result of the subsequent discussion I agreed with the Director I would so participate and I was then asked to participate on a committee to advise the Director on the promulgation of the guidelines for the proposed test. At the same time I agreed to do that, I was appointed or approximately at the same time, appointed by the Sheriff Hackel, President of the

Michigan Sheriffs Association, as Sheriff of the Association, a liaison to that group, advisory group I had been involved in in promulgation of these guidelines. And I have what I believe to be a copy of the most recent guidelines.

Q. To you that's an advisory group; is that true?

A. I guess that's the title for it, yes, ma'am.

Q. Prior to becoming on the advisory committee, had you taken a position with regard to the efficacy of the use of sobriety checkpoints or check lanes?

A. Yes, I believe, I can't tell you specifically when, but probably a year earlier or so, I was asked by someone in the local media whether I had a stand, [164] publically, and I do not remember the person. I had a position and did take a position, yes.

Q. What was that position?

A. At that time I indicated I felt that sobriety check lanes were not as effective and would not be effective as road patrols in the apprehension of drunk drivers and the deterrence of drunk driving.

Q. Did you at some time communicate your point of view to the Director of the State Police and the Department of State Police?

A. I'm not certain I communicated to the Director, I know I communicated to State Police Officers as high as the rank of Captain, socially and not formally. I don't recall taking a particular position during —

Q. — Prior to taking that and prior to having been on the advisory committee, did you make your own position known to the Department?

A. Yes, I did, because I did discuss it with Captain Bellaire (phonetic), Robert Bellaire (phonetic), Director of Michigan State Police, the gentleman that approached me initially, and I do recall discussing it with him.

Q. Based upon what you have now reviewed as part of the advisory committee and your understanding and experience on the committee, and your having observed [165] and heard about the guidelines and the implementation, have you changed or sustained with regard to your opinion of the use of sobriety check lanes and checkpoints?

A. No.

Q. You continue to take the position they are not an effective tool for getting at the drunk driving problem?

A. Not as effective as the method we are now using, in my opinion.

Q. Okay. With regard to your desire to have such a checkpoint program set up in your County, in conjunction with your Sheriffs Department, what is your opinion on that?

A. I'm still willing to participate in a test of the process, because I feel that the best way for a full evaluation and develop the issues, that way we can decide whether it is reasonable or not.

Q. But left to your own decision, and ultimately using your own money and resources, within your own County, is it your opinion that you would utilize this sobriety check lane or checkpoint as a technique?

A. Based upon what I know now, I now believe I would not establish as sobriety checkpoints nor would I recommend one, if that were in lieu of expending these [166] resources available on patrol.

Q. Did you make a recommendation to the Michigan Sheriffs Association with regard to the use of sobriety checkpoints or check lanes?

A. No, I have not.

Q. Are you planning on making a recommendation?

A. Not as to regards what the practice is, maybe I will go to the summer conference.

Q. At this point, were your recommendations — strike that.

Are you aware in 1984, the Michigan Association of the County Sheriffs took a position against the sobriety check lanes or checkpoints?

A. Yes.

Q. And in those recommendations, would they be for the same position to be taken by this Association?

A. I have not formulated a recommendation to the Association. I did not at the past meeting and I can't tell you when I'm going to recommend to the Association.

Q. Talking about Kalamazoo County for a moment, the County itself, is it correct this is a rural County in some areas at least?

A. We have a total County population of approximately two hundred twelve thousand. We have urban areas [167] and agricultural areas and say percentage of Kalamazoo and Township of Kalamazoo, respectively, population of 4070 and twenty-five thousand. We have both urban and rural population. The remainder of that would be in villages and towns and urban environment.

Q. Do you have an opinion with regard to the effectiveness and cost effectiveness of the use of the checkpoint program in the rural areas of Kalamazoo County?

A. They are not ready to, in my opinion, adaptable to rural environment. They're not going to be effective there.

Q. Why is that?

A. Not enough traffic.

Q. I don't have any other questions, thank you, Sheriff.

CROSS EXAMINATION

BY MR. O'BRIEN:

Q. Sheriff Edmunds, have you ever had sobriety checkpoints in your County?

A. Within my personal knowledge, no.

Q. My understanding you have not directed patrols or concentrated patrols in any certain areas?

A. From time to time we direct patrols attention, but not the area of OUIL enforcement, not during my tenure, no.

Q. Do you have and do you use the MALI System?

[168] A. It is used within our Department, yes. I am familiar with it.

Q. How is it used in your Department?

A. As best I know, the information that is obtained, that MALI issued by our traffic patrol, compared in this, traffic especially to determine areas that we may want to concentrate on, and that specific times because of accident frequency.

Q. Do you have these types of areas within your County where there is a high incidence of alcohol-related accidents and concentrated within a short time span?

A. I believe so, I believe some of it is identified in this process.

Q. And then your initial talks with the State Police, were some of these areas being considered as the first sobriety checkpoints?

A. Absolutely.

Q. Assuming that the first checkpoint was a formal checkpoint, and only gone on for say one hour, and there were the expected eight to twelve people there, where they would have had an arrest record of say two arrests for at least say twelve manhours, based on your experience, is this —

THE COURT: Twelve manhours?

MR. O'BRIEN: Yes.

[169] THE COURT: Going through the mathematics on that again, I think you lost part of your question.

(By Mr. O'Brien, continuing)

Q. On May 17th, the checkpoint only lasted one hour. The expected participation at one of these checkpoints is between eight and twelve officers. Assuming then that there was two arrests for twelve manhours, based on your experience in your County, would that be a good use of manpower?

MS. GORDON: Excuse me, I object to that, assuming facts not in evidence. The fact is there was a list of nineteen officers on the scene and they effectuated two arrests, and that the check lanes operated for a longer period of time.

There was a set-up and a debriefing period involved. I think his question is speculative and it does assume a whole set of facts that have nothing to do with the reality of May 18th checkpoint.

THE COURT: I think the Colonel said there was a number of people there for observation and normally probably wouldn't have the briefing and debriefing. But because of the novelty of the concept at least, they went into that. I will allow him to answer the question.

[170] MR. O'BRIEN: Thank you.

THE WITNESS: It is still somewhat difficult perhaps to answer. The best I can give, Mr. O'Brien, is that I can't have a real concrete grasp of the statistics where you're speaking two arrests for twelve manhours.

(By Mr. O'Brien, continuing)

Q. Yes.

A. I can tell your from review of some patrol statistics I made on the way here, depending on the shift, that would probably be either, have effective or perhaps ineffective depending on our shifts. Obviously our day shift does not experience the OUIL arrests that the eight P.M. to two in the morning crew is going to. And the same with afternoon, they pace up a little bit. We may — I can give you numbers, perhaps you can answer the —

Q. What is the base line or average number of manhours per drunk driving arrest?

A. This statistic I can quote you is that in the months of March and April of this year we averaged point nine drunk driving arrests per officer total in the Traffic Patrol Division per month.

Q. How many — that's for this whole months time, you did one point or point nine arrests?

[171] A. That is assumed he was even there, that's just based on numbers. We made approximately one hundred forty-three arrests a day.

THE COURT: I have a problem with your question, Mr. O'Brien, prior to the man element that you omitted from your question. If we take a look at it, it seems to me the population in the County and the numbers of officers and all the rest of it, as well as the time that the arrests were made. I'm not sure I understand the answer the the question and I'm not sure what it means here today.

MR. O'BRIEN: Well, if we could get the data or statistics as to the times specifically in the same situation, I would ask that, Your Honor. I don't think that's available.

THE COURT: Maybe bring it up with the Sheriff of Saginaw County, maybe he would know it in his County. The only thing we have gotten from this Sheriff is that as a means he has never used it and he's not likely to use it at this point.

MR. O'BRIEN: I understand that, Your Honor. We do have these statistics, however, and we will provide them to the Court.

THE COURT. All right.

(By Mr. O'Brien, continuing)

[172] Q. I understand you have a legal background and you were Assistant Prosecutor?

A. Yes, sir.

Q. You sat on the committee that drafted the Sobriety Checkpoint Guidelines?

A. As advisor to the State Police, yes.

Q. Did you have any input into any of the procedures to be followed in regard to the stop and what should go on during that period of time?

A. Yes, sir.

Q. What was your input?

A. I would have to review, I apologize, they're in the car, my notes from each meeting. I can give you my best recollection of the areas within which I had specific recommendations. I had recommendations regarding who was on the scene. Simply whether the guidelines were appropriate to say that a State Police Officer would be in command. I suggested there would be at least cooperative efforts. I also specified recommendations, as I recall, regarding some of the safety aspects as to the placement and configuration. Some language changes. I don't think it changed the actual import of the guidelines.

And I believe I had some concern about [173] the procedures used in the contact. I can't specifically remember what I recommended, but I do remember making recommendations in that area about the nature of activity of the officer who had contact with the stopped citizen would take.

Q. Why did you recommend that a command officer be present?

A. I simply — the original guidelines indicated a command officer would be present. My concern was that because we were proposing to use more than one department, perhaps as many as three for that matter, the protocol

amongst police officers that the senior officer there, had to be at least a lieutenant from the State Police. If he or she were going to command a checkpoint, I would not be sending a sergeant to work for a lesser rank officer from another department.

Q. What specifically about the configuration did you recommend changing?

A. That's difficult right now, as I recall, the best of my recollection had to do with how far back the vehicle was stationed where the first warning point was to give notice. And we talked about standardizing the flashlight cones to the minute detail. I felt it was important they would all [174] look the same. They could not be contrasted with an ordinary road cone. These are little reflectors and flashlight traffic director devices. I did have discussions regarding whether they should pursue a vehicle that fled. I can't remember my exact position. My position at the time, I believe was that if they were driving indicating a problem, we should definitely pursue on reckless or careless driving violation or bad driving.

Q. Do you recall what procedures in the contact recommendation was?

A. That it had to do with the acctual statements made by the officer making contact. I think it was, I recall it was revision of language related to whether the person identified himself as an officer or trooper. I believe I suggested they make that over into those participating departments and they would not need to modify the title.

Q. Do you have a question in your mind that, whether the sheriff's deputies are as well trained as State Police Officers in regard to identifying drinking drivers?

A. I really can't speak for eighty-two other counties,

from personal knowledge, my — I have an opinion. I have a conviction that our officers are as well [175] trained on the average as anyone in the business in the State, including the State Police.

THE COURT: Well, we only have eighty-one more counties to come up with, Mr. O'Brien. I'd be surprised if there'd be any other answer from any other county.

MR. O'BRIEN: No, Your Honor, that was not why I asked it.

(By Mr. O'Brien, continuing)

Q. You have not conducted the sobriety checkpoints in your County today. If, based on this pilot program they prove to be effective both in arrest and deterrence, would you be willing to try them in your County?

A. Yes, sir, and I would be willing to participate as I said, even prior to that proof. I feel if they have some deterrent value, they do make arrests. And I know what they can do, and as time goes on if they're beneficial, if it's offered, I'll take it.

Q. I have no further questions.

REDIRECT EXAMINATION

BY MS. GORDON:

Q. Just a couple of follow-ups, Sheriff. On your last comment, did you mean that if it's offered as a free pay to your County, and the police will come in and [176] so it's not a reallocation of your own resources, you're willing to try it?

A. If it had — my first choice would be to place these

resources in patrol. But yes, if I have that additional option and to bring in the other benefit of assistance without cost, certainly I'm going to ask for it.

Q. Thank you. No further questions.

THE COURT: Thank you, Sheriff Edmonds. We appreciate you being here today.

THE WITNESS: Thank you, Your Honor. I appreciate your patience. (Whereupon the witness spoke to the Court Reporter.)

[Testimony of Robert Ficano Transcript Vol. I]

[176] MR. GAGE: The Plaintiffs call Robert Ficano to the stand.

ROBERT FICANO, having been duly sworn by the Clerk of the Court, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GAGE:

Q. State your name, please?

A. Robert Ficano

Q. Your occupation and profession?

A. Sheriff, Wayne County.

[177] Q. How long have you held that position?

A. Three years.

Q. What position have you had during that time?

A. Deputy in charge of Wayne County.

Q. The last three years you have been in charge of the Sheriffs Department of Wayne County, charged with the enforcement of drunk driving laws in the State of Michigan; is that correct?

A. That is correct.

Q. Is Wayne County one of the largest counties in the State of Michigan?

A. I believe it is the largest county in the State of Michigan.

Q. Have you, during the course of these three years, adopted any specific programs or tailored any directives to the reduction of drunk driving deaths or injuries in enforcement of drunk driving laws?

A. Yes, sir, we have. We have what is specifically known as OUIL Squad, which is five officers. They are assigned to go out and patrol with the primary purpose of alcohol enforcement.

We also have a part of our section a road unit which is a grant from the State of Michigan which is Traffic Enforcement, which also has an obvious impact on the alcohol enforcement. And we [178] also participate in a grant from the State of Michigan on alcohol enforcement, which is distributed, I believe, through the Department of Transportation which permits us to take up overtime in a few additional patrols for alcohol enforcement.

Q. Do you have an opinion as to whether or not these programs have been effective in the County of Wayne?

A. Yes, we feel they have been very successful. We — last year alone I think we made over one thousand OUIL arrests.

Q. All of these programs — you're a lawyer by profession, are you not, sir?

A. That is correct.

Q. Do all of these lawyers — all of the programs require — all of the programs you have discussed and implemented require that your officers have at least an articulable suspicion that the person they are interrogating or stopping is involved in some criminal activity?

A. That's the correct standard, that threshold that they must observe in order to stop a vehicle.

Q. Sheriff, have you become aware of the proposed — in fact partially conducting a pilot program involving the so-called sobriety check lane in the State of Michigan?

[179] A. Yes.

Q. Have you had a opportunity to become familiar with any of the guidelines for that program?

A. I have not seen the guidelines, I just observe or read some articles in the newspaper.

Q. Are you familiar with the check lanes to the extent that you're aware of a certain number of officers from eight to twelve, stationed at a particular location for a period of hours to detect primarily drunk drivers?

A. That is correct.

Q. Based upon your experience in operating this County and directing this County and allocating its resources among these various personnel, do you have an opinion as to whether this is an effective means, an effective allocation of resources in terms of either arresting drunk drivers or deterring drunk drivers from the highways?

A. I am sure that it may be — actually I found the most effective method is the random patrol as it's implemented right now.

Q. Do you have any knowledge that Wayne County has been excluded from the proposed program for —

A. — I have no personal knowledge, no.

Q. What is the basis for you opinion that the more [180] effective method would be the directed patrol that you talked about as opposed to the check lane?

MR. O'BRIEN: Objection, I believe the testimony was random patrol was the most effective. Counsel has just indicated directed patrol.

MR. GAGE: I will stand corrected and refer to the program that you described. Perhaps I used the wrong term, the basis of your opinion on the program you have in use in Wayne County to be more effective than the check lane program in either effectuating arrests or deterring drunk driving behavior?

THE WITNESS: The number of officers that are needed to implement the check lane versus a random patrol that we utilize right now. For example, our OUIL study uses five officers and in one year they were able to make over six hundred arrests. We feel along with some of the summaries, we do get — we get statistics on areas that have high incidences of drinking and alcohol related accidents. And we

will have a tendency to put patrols in these particular areas. And we have found that the officers, they work one person cars, have been very effective in making arrests, statistically.

[181] (By Mr. Gage, continuing)

Q. Have traditional methods of enforcing laws with the assistance of new technology of the computer, are they proving more effective than it has been in the past? Is that your experience?

A. The computer revision, yes, has helped us from the past practices.

Q. Would you, if asked to redirect your resources and your manpower to the check lanes, adopt the program in Wayne County to that effect?

A. At this time we had opportunity about a year ago to look at it. We decided against it. We decided to see how the experience went with the State Police, and any of the results from that at this point, we did not have any plans to adopt such a program.

Q. Thank you. I have nothing further.

CROSS EXAMINATION

BY MR. O'BRIEN:

Q. I believe you just testified you're going to look at the results of the sobriety check lanes that the State Police are — have begun; is that right?

A. Correct.

Q. For what purpose would you look at them?

A. Overall evaluating different techniques for any type of enforcement. We look at any results that any [182] department will try, any new techniques.

Q. If this new techniques proves to be very effective in regards to deterring drunk driving, would you consider using that in your County?

A. If it's proven to me and my staff, we would consider using it.

Q. Only one more question. Do you feel that your sheriffs are as well trained as State Police Officers to detect and determine a driver who has been drinking or under the influence of alcohol?

A. Yes, my deputies are police officers that are very highly trained, and have lots of training in alcohol enforcement.

Q. No further questions.

MS. GORDON: Now we have eighty counties.

THE COURT: We have eighty counties.

REDIRECT EXAMINATION

BY MR. GAGE:

Q. Let me ask you a question. Let's assume that the State Police were, with this computer. They have it in Lansing and they found a designated area within the County that was a high crime area. And they sent out a pilot program to stop everybody walking down the street and somehow they were dispensing with this nasty requirement of suspicion or probably cause. [183] Do you think that would reduce crime,

perhaps in a high crime area if the police were able to stop everyone walking down a certain street?

MR. O'BRIEN: Objection, Your Honor. This hypothetical is based on no facts that are in the record, and is totally outside the balance of this matter.

THE COURT: And yet you have gone into some of the cases and rendered decisions in this area. Nonetheless, I think it is a bit speculative. We will sustain the objection. I guess Judges can do that on their opinions.

MR. GAGE: It's permitted to speculate on opinions, but not in Court.

THE COURT: Isn't that what they have been doing?

(By Mr. Gage, continuing)

Q. Let me ask you, based on your expertise in running this County for the last few years, do you have high crime areas in Wayne County, depending on your definition —

THE COURT: — Running the County? Maybe just —

MR. GAGE: — It would be I just promoted him.

[184] THE COURT: If it's a promotion.

MR. GAGE: It often leads to other things.

(By Mr. Gage, continuing)

Q. Are there — is it a possibility to identify high crime areas, for example a neighborhood that would have a traditionally five fold crime murder rate or robbery rate or drunk driving rate.

MR. O'BRIEN: Objection, Your Honor, as to the relevency.

MR. GAGE: It's clearly relevant to the issues of what we are dealing with. That is whether or not the intrusion into the personal liberties we are here to defend is in fact going to be permitted. And I think one of the things the Court has to consider in its determination —

MR. O'BRIEN: — Objection as to Counsel's —

MR. GAGE: May I be permitted to at least one, to clarify my statement in response to his objection, thank you.

Your Honor is going to have to rule not only on the factual matters which the Court well knows, Your Honor, but to make a determination as [185] to where this is going to lead us. And as to whether or not the danger which is inherent within permitting —

THE COURT: — With all due respect, Counsel, we are going to rule on this case, not on any other case or any other set of facts. This matter.

MR. GAGE: I understand that, Your Honor. The ruling in any case, one has to determine its impact on society. Ruling on any case involves Constitutional Rights. Constitutional Rights are certainly brought into question in this issue.

THE COURT: That's what, Brown versus Texas —

MR. GAGE: — Exactly. One should take into consideration the fact of his ruling in other areas and the legal extent of the kinds of activity that the State wants to engage in here should be explored. It is relevant to the issue.

THE COURT: Quite true, sir, sustain the objection.

MR. GAGE: Thank you, Your Honor.

(By Mr. Gage, continuing)

Q. Sheriff, as you sit here today, and with your experience and background you have no information or no data or nothing to support in your mind the [186] proposition that the said check lanes are more effective than the traditional law enforcement in deterring drunk drivers; is that correct?

A. That is correct.

MR. GAGE: Thank you. I have nothing further.

MR. O'BRIEN: No further questions.

THE COURT: Thank you, Sheriff. I think we will take a very short recess.

(Whereupon the Court recessed at or about 3:55 P.M.)

* * *

[Testimony of Raymond Cotton, Transcript Vol. II]

[36] Q. And what has been the conclusion that you have drawn?

A. The conclusions that the State Police have drawn on the sobriety checkpoints when used in a total effort, that means in combination with other measures, is an effective deterrent against drinking and driving.

* * *

[57] MR. GRANZOTTO: Defendants' Exhibit Number 6. It's marked as page four, would you read that for me, please?

THE WITNESS: "It was also recognized that it would be impractical to expect that the pilot program design would enable the impact of sobriety checkpoints to be measure conclusively, [58] since many other factors affect the level of accidents."

(By Mr. Granzotto, continuing)

Q. You went in, of course, with that idea it was going to be a, conclusively correct?

A. We expected it not to be conclusive.

Q. Did it establish or does it establish that these things were deterrent conclusively to your —

A. — No, it did not.

* * *

[65] Q. Just tell me what the Maryland Police would do to a person who comes under that category?

A. He would be released to — they would be released to go on their way.

Q. They would be passed through the checkpoint, correct?

A. Yes.

Q. They would be asked to pull over to the side of the road, correct?

A. Of course they were.

Q. Asked to exit their vehicle, correct?

A. Yes, they would.

Q. What would happen then?

A. Then investigation of the sobriety could be conducted, certain tests would be administered, and [66] if they were found to be sufficiently intoxicated they would be released to go on their way.

* * *

[Testimony of William Slaughter Transcript vol. III]

[104] Q. All right. During your direct examination you talked a little bit about a number of ways that you have learned to detect drinking drivers while on patrol. Could you specifically enumerate for us please the things that you look for in patrol in order to determine whether or not somebody is driving in an intoxicated state?

A. As far as driving behaviour characteristics

Q. Correct.

A. Numerous driving manuveurs that would indicate a person is under the influence.

Q. Tell us what you will look for, what these are that make you aware of the fact a person might be intoxicated?

A. Probably the most overt would be driving left of the center or weaving within the roadway dropping down into the shoulder of the road. Some more subtle type of behaviour might be erratic braking, improper turning manuveurs. A whole host of others, driving in the daytime with your headlights on.

[105] Q. Dozens of things you can look for, are there not?

A. Yes.

Q. State Troopers are trained to look for these things; is that correct?

A. That is correct.

Q. To be skilled and able to detect who might be driving while intoxicated; is that correct?

A. That is correct.

Q. It is true, is it not Lieutenant, merely the sheer presence of an officer in a patrol car acts as a deterrent to individuals who might be considering driving while under the influence?

A. No, I dont think that's correct.

Q. You don't think it is correct just being in a patrol, marked patrol car down in the highway in and or itself is a deterrent thing?

A. It is a deterrent. I think visibility will always be a deterrent.

Q. It is true, is it not that these roadblocks are not fixed roadblocks are they. They are the — the whole point of them is to move from one location to another on any given weekend?

A. That is correct. That's an option that can be utilized.

Q. But you don't intend as part of your plan these roadblocks will remain in one location throughout the State or over [106] several mixed locations throughout the State?

A. That is correct.

Q. Purpose is surprise is it not, move them around there is element of surprise and lack of awareness on the part of the public as to where they might encounter them?

A. Not as much as surprise as on the premise that a motorist could be stopped at any particular time or location and throughout the county.

Q. To set them on a fixed location a particular more fixed location would defeat the purpose; it that so?

A. Not necessarily.

Q. Why not — Why not if everybody knew between one and eight every single day every week-end of the year wouldn't that have impact on your ability to detect drunk driving?

A. Yes that would. We are not publicizing the actual location. We are — checkpoint would be set up. The general public if their perception of the checkpoint could be at any location within the county.

Q. The question was about permanent checkpoints, whether that would decrease the deterrent effect perhaps?

A. Yes that would be to set up a permanent location.

Q. You were one of the individuals who went to Maryland; is that correct, in order to examine and analyze their program?

A. That is correct.

Q. Okay. It is true, isn't it Lieutenant, you don't have any [107] data from Maryland which in your mind conclusively establishes these drunk driving roadblocks as a deterrent?

A. That is correct.

Q. It is true, isn't it, that your examination of the Maryland program did not convince you it was inconclusive as far as your were concerned; isn't that so?

A. Of the reports I read; that is correct.

Q. Okay. And you had more questions in your own mind that needed answers after you reviewed the Maryland reports and reviewed the data?

A. That is correct.

Q. And you knew, didn't you, there were other factors that you had to take into consideration with regard to any results in Maryland, or the fact their's was going on with regard to other programs and conditions and so on?

A. What are we talking about, specifically?

Q. Other new laws that might have come into play in Maryland, you knew in our mind this could have an effect, for example safety belt laws?

A. That has had an effect, yes, sir.

Q. In the event you never made a definite conclusion either with regard to Maryland and the deterrent effect, did you?

A. That was not my responsibility; that is correct.

Q. It is true, isn't it, you and some other individual and your decision hand some serious questions with regard to this was [108] an adequate way to reduce the number of fatalities when you compare the manpower involved?

A. No that is not correct.

Q. Not true that you discussed this with some people in your division and the question was raised with regard to whether this was an effective way, cost effective way to reduce fatalities?

A. No. I do not recall any such discussion.

Q. You don't remember any general discussion?

A. It was informal discussion primarily that occurred and within my individual section.

Q. You haven't reached a conclusion have you with regard to whether or not this is an adequate way to reduce the number of fatalities vis a vis cost effectiveness?

A. No, we have not. That's the purpose of the pilot program.

Q. Okay. Now taking you back to the scene of the roadblock for a moment, Lieutenant. I would like to talk with you about what would cause one of your officers to actually pull somebody over to the side for further questions. It is true, is it not it is up to the individual officers to decide who and why he or she will pull someone over?

A. That is correct?

Q. Okay. And what do they look for, tell us without using repetive language the source you have talked about previously, give us some of the specifics which would cause [109] somebody at the scene of a roadblock to pull somebody over to the safe zone?

A. Strong odor of intoxicants emanating from the person. If there was any conversation between the officer the driver, to identify this mode of speech. That might indicate under the influence.

Whether his eyes are bloodshot and face is flushed, general appearance. Whether or not he appears to be sleepy confused. General appearance of his clothing, whether they are in disarray. Whole host of number of clues that might indicate a person is under the influence.

Q. You could say any combination of these factors, is that true?

A. Yes.

Q. Is it true merely the odor of alcohol on somebody's breath is not determinative of the fact that a person is driving while intoxicated? Is that true?

A. That is correct.

Q. It is true, isn't it, that simply having your clothes in disarray and disheveled is not an indication you are driving while intoxicated?

A. That is correct.

Q. Having your shirt unbuttoned is not an indication, is it?

A. That is correct.

Q. But you have testified previously, haven't you, that a [110] person driving with his shirt unbuttoned would be a factor or a clue?

A. (No response)

Q. Did you agree with that?

A. No, I would not.

Q. Let me ask you this, do you feel that somebody driving through with their shirt unbuttoned might be giving an indication they are driving while intoxicated?

A. Taken into consideration with other factors, it could possibly enter into an officer's decision whether to investigate further; that is correct.

Q. Without it — but isn't it lieutenant, any one of these factors alone can be enough in the conduct of your program to pull somebody over?

A. No, that is not correct.

Q. It is true, any one factor could be enough?

A. That is correct.

Q. Up to the individual officer isn't it?

A. That is true.

Q. He did say that the shirt being unbottoned is a clear sign of intoxication he or she will pull the individual over wouldn't they?

A. No they will not.

Q. Why not?

A. I think the officer is experienced, he generally knows that [111] one individual factor is not enough that would indicate, give him probable cause to believe that the person is under the influence.

Q. Bottom line, Lieutenant, it is up to that individual officer; isn't it?

A. That is correct.

Q. And you would agree, wouldn't you, just one factor would be enough?

A. No, I would not agree.

Q. Do you remember testifying to something different than that previously? Do you remember taking your deposition on May 27, 1986 at 10:30 a.m. in Lansing?

A. Yes, I do.

Q. Let me ask you these questions and-answers.

THE COURT: Would you like to show it to him?

Q. Do you remember previously testifying Lieutenant any one factor would be enough, could be enough to pull somebody over?

Q. Yes, I do.

Q. Do you remember testifying previously that no factor could be enough to pull somebody over?

A. I think it depends, if I can elaborate.

Q. I will take the answer first. Do you recall previously testifying that no factor, no factor could be enough to pull somebody over?

[112] A. No, I do not.

Q. Let me read the questions and answers I just showed you to refresh your recollection. Question it is true, isn't it officer, if he or she thought it was appropriate to pull this driver over? Answer that is correct. Question, just for one factor? Answer, that is correct. Question or for no factor?

Answer theoretically that is correct.

Do you remember that testimony?

A. Yes.

Q. Do you have a different answer here today?

A. Theoretically no. I do not.

* * *